

September 10, 2019

Kimberly Claussen

Project Manager

King County Department of Permitting and Environmental Review

35030 SE Douglas St, Ste. 210

Snoqualmie, WA 98065-9266

[Kimberly.claussen@kingcounty.gov](mailto:Kimberly.claussen@kingcounty.gov)

RE: Comments on Revised Permit Application #: PLAT18-0007; Project Name: Gunshy Manor; Parcel No: 082506-9012, all (082506) 9013, 9067, 9102, 9103, 9104, 9105; Project Location: on the east side of 196th Ave. NE (aka Red Brick Road); Applicant: The Estate of Barbara J. Nelson

Dear Ms. Claussen:

We, concerned citizens of King County, including neighbors to the proposed Gunshy Manor Project, submit these comments in response to the notice of revised application for Permit Application #: PLAT 18-0007, submitted by the Estate of Barbara J. Nelson. We have recently learned of the open SEPA comment period, extending through September 11, 2019. It is deeply concerning and frankly egregious that not a single registered party of record received notification of this comment period from the County. In fact, our community only learned of this period through an unrelated government agency. This is emblematic of the County's behavior since the permitting process for this project began in late 2013: to date, the County has acted primarily to further the interests of the Applicant and has not addressed a single concern from our community.

In response to this comment period, we are resubmitting our letter of July 17, 2018 that shows credible evidence of an unpermitted landfill containing hundreds of thousands of cubic yards of demolition debris and hazardous substances directly adjacent to the proposed building site (see attached). We bring to the County's attention that the US EPA Superfund & Emergency Management Division are currently conducting a Preliminary Assessment at Gunshy Manor, including identification and sampling of private wells downgradient of the affected site.

To date, King County has not responded to our community on this matter in any credible way and is not conducting any type of investigation into these serious and credible concerns. Instead, King County DPER continues to assist the Applicant in forging ahead on the permitting process for the site. Instead of protecting the environment and the health of King County's citizens, DPER continues to put both at risk.

We reiterate that the public record demonstrates that King County DPER has utterly failed to observe and act upon evidence of unpermitted discharges on the site over a period of years despite 1) the magnitude of the work which was readily visible to neighborhood residents, 2) numerous citizen complaints to DPER including photos and other evidence, and 3) aerial imagery of bulldozers performing substantial earthwork on the site at the time the citizens lodged complaints, all of which were publicly available on sources such as Google Earth. It is implausible that a trained DPER regulator could simply miss such substantial activity being performed out in the open.

It was only after concerned citizens appealed to external government agencies that federal enforcement action was taken against the Applicant for concerns ignored by County, including destroying salmon-bearing waters of the United States. This action resulted in an Administrative Order on Consent

requiring clean up and remedial action on the site (See United States Environmental Protection Agency Administrative Order on Consent, Docket No. CWA-10-2016-0087 and Consent Agreement and Final Order, Docket No. CWA-10-2016-0088).

As a result of this action, the County was forced to acknowledge the code violations committed on the property. However, only a limited remedy was pursued, allowing the Applicant to leave thousands of cubic yards of unauthorized fill in place, which facilitated the development project and perpetuated harm to the already impacted wetland. No criminal investigation against the Applicant or contractors or anyone involved with these violations was conducted and the Applicant was given a minimal fine despite years of egregious violations.

We note that lesser violations typically result in a six-year permit moratorium on all development and permitting on King County Parcels, as outlined in King County Permitting Customer Bulletin #28. No such moratorium was applied in this case. Even now, as site remediation is barely complete, King County DPER is considering issuing new development permits. Unfortunately, the County has shown a consistent pattern of favoritism towards this applicant, and a complete inability to enforce the law on this property.

#### **Potentially dangerous unpermitted landfill**

There is credible evidence creating serious concern that an unpermitted landfill on the property is leaching dangerous contaminants into soil, surface and ground water every time it rains. These concerns are so significant that the US EPA's Superfund & Emergency Management Division are currently conducting a Preliminary Assessment. This matter must be resolved before any further development takes place on the property. The County must fulfill its responsibility to protect the environment and human health, and must cooperate with federal authorities to ensure it is safe for more people to live on or next to this site.

The community asks, again, that the County to do everything within its authority to determine whether an unpermitted landfill exists on Gunshy Manor, and to protect human health and the environment from any toxic substances that might be discovered. Again, we strongly request the suspension of all consideration of development on the property until these issues are fully resolved.

To the extent that there is an unpermitted landfill requiring removal of contaminated materials, the County must take steps to ensure that King County taxpayers are not forced to pay for its cleanup. Instead, the County must take steps to ensure that funds belonging to the estates of the responsible parties will be used for this purpose. As noted in 2018, we continue to strongly suggest that the County file a *lis pendens* notice on this property.

#### **Landslide Risk**

As we previously stated in our letters from 2014, approximately 20 of 23 homes in the proposed development would lie in a county-defined "landslide hazard area." The county describes the identified area as "subject to severe landslide risk identified in the Sensitive Areas Ordinance." Additionally, three existing properties in the adjacent Gunshy Ridge neighborhood are in the same hazard area at the top of the dangerous slope. Although there has been little historic landslide activity in the hazard area, the



slope and supporting soil have never been disturbed in a way as will be required for the construction of the development. The disruption from the development, combined with the known combination of steep slopes, impermeable soils and groundwater seepage at the site is very troubling and could result in disastrous consequences for at least 20 households if the development is allowed to proceed as planned.

### **Risk of increased flooding to downstream homes**

As noted in our community letter from 2016, the previous unpermitted filling of the wetland with thousands of cubic yards of fill material has greatly altered both the hydrology and the floodwater storage capacity of the wetland system on the property. The community has suffered from increased flooding since this unauthorized activity occurred, and has provided the County with extensive documentation of flooding impacts on properties downstream of Gunshy Manor.

As a result of the County's inadequate settlement with the Applicant, the floodwater storage capacity and critical flood control functions that the impacted wetlands once provided for the entire community were not restored. In particular, residents along Martin Creek and near Evans Creek on the north side of 196th Ave NE have experienced significant flooding since the unpermitted fill was discharged. The construction of 23 additional homes will greatly increase impermeable surfaces upstream of these areas that will drain directly downhill, adding more runoff to already impacted wetlands and further endangering neighboring homes. In addition, increased runoff would also potentially increase risks from any toxic materials that may have been buried in the unpermitted landfill mentioned above.

The Western Washington Growth Management Hearings Board Digest of Decisions states that:

"The issue of allowing new residential construction in frequently flooded areas is a question of protection of critical areas. Pursuant to WAC 365-195-825(2)(b), "protection" of critical areas also means "to safeguard the public from hazards to health and safety." Whether to allow new residential construction in a frequently flooded area is a matter of hazards to public health and safety. Therefore, the adoption of regulations allowing such residential construction must include Best Available Science (Page 44 of 423).

We ask the County to demonstrate that they are using Best Available Science in their decision to allow the construction of 23 additional homes in this area, and to implement contingencies to protect existing homes from flooding. In addition, we ask that an ongoing monitoring program be required by the permitting process to ensure that runoff levels are monitored and contained during and post-construction.

### **Clustering**

The administrative record for this site, which demonstrates its unique ecological, environmental, historical and human health conditions would render this clustering determination arbitrary and capricious. The density of the homes that are being requested in this permit is three orders of magnitude greater than what is permitted in areas that do not have these unique concerns.

Of the approximately 116 acres on the property, approximately 90 acres are located within critical areas. Considering the appropriate buffers, this leaves approximately 25 developable acres. These are zoned RA-5 and RA-5P, allowing one dwelling unit per five acres as per King County code 21A.04.010. However,

the lot sizes requested by the Applicant for 23 homes range in size from 0.81 to 1.27 acres in size, well below the 5-acre requirement.

King County Code section 21A.14.040 allows for clustering of homes under certain conditions, with the following restrictions:

21A.14.040 B1 - "No more than eight lots of less than two and one-half acres shall be allowed in a cluster"

21A.14.040 B2 - "No more than eight lots of less than two and one-half acres shall be served by a single cul-de-sac street".

21A.14.040 B8 states that these requirements "may be modified or waived by the director if the property is encumbered by critical areas containing habitat for, or there is the presence of, species listed as threatened or endangered under the Endangered Species Act when it is necessary to protect the habitat"

The Applicant's SEPA checklist justifies their excessive clustering request as follows: "to help preserve the Chinook salmon and their habitat, the proposed layout of the 23 planned residential lots has been clustered away from wetlands and aquatic areas, and their buffers."

The above statement demonstrates how outrageous the proposal is and how arbitrary and capricious agency approval would be.

Further, locating 23 houses in an area with existing large 5-acre lots, adjacent to the Evans Creek Natural Area and a 100+ year historic brick road would grossly alter the nature of this historic valley, transforming its rural, farming character to one more reminiscent of a city within the GMA boundary.

Additionally, the risk to residents in locating 23 houses in a cul-de-sac whose only external access is a busy one-lane arterial should not be ignored. One reason for the restriction in King County Code 21A.14.040 B2 is the difficulties emergency services may encounter in attempting to rapidly access properties inside such a development.

We affirm that the administrative record is devoid of any support for exceeding the King County code's maximum of eight houses per cluster. Given past compliance problems, the sensitive surrounding ecosystem, possible landslide zone risks, and the risks of increased runoff into an area being investigated for unpermitted landfill activity, any decision by the Director to waive the County's own clustering rules would be arbitrary and capricious. The County has already demonstrated an inability to regulate this piece of property and this Applicant, and such a decision would exacerbate existing concerns about the integrity of the County's regulatory system and its ability to protect the public to which it is accountable.

### **In conclusion**

We, concerned citizens of King County, see no other defensible choice for the County other than to place a moratorium on any permits for this property for a full six years, while performing a full investigation into reports of an unpermitted landfill submitted in 2018. This will allow time for said investigation, as well as any potential remediation, without placing at risk the health of the environment or that of any King County citizens. Past this period, the County should refrain from approving development plans for any cluster beyond 8 homes, as allowed by the King County Code.

Any decision to proceed forward with this project should require an extensive public hearing. Please send notifications to all persons of record and all others who have submitted comments in the past. The majority of them would most likely be interested in testifying at such a meeting.

Please find attached our community's letters from 2014, 2016 and 2018 in which we discuss many of these issues in further depth.

Sincerely,

Citizens of King County

cc:

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June 19, 2014

Dow Constantine  
King County Chinook Building  
401 5th Ave. Suite 800  
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Kathy Lambert  
516 Third Avenue, 12<sup>th</sup> Floor  
Seattle, WA 98104

Dear Mr. Constantine and Ms. Lambert:

We are writing to request that you suspend all review and authorizations for the proposed Gunshy Manor development,<sup>1</sup> including but not limited to the short plats, pending an investigation into:

- (1) whether unpermitted destruction of aquatic resources on the subject property, including the filling of wetlands and moving and channelizing of one or more tributaries to Evans Creek, has occurred over the last four years in violation of the federal Clean Water Act and other environmental laws;
- (2) whether the county engaged in a pattern and practice of failing to (a) respond to citizen tips and complaints regarding the potential unpermitted destruction of those aquatic resources, including moving and channelizing one or more tributaries to Evans Creek, (b) investigate or (c) take enforcement action over a period of four or more years;
- (3) whether county officials violated privacy laws by sharing emails and telephone inquiries from residents who contacted the county for information about the proposed development with the project proponent; and
- (4) the integrity of the county regulatory process, which has further been called into question because of statements a county official charged with protecting the county's historical resources made in an email endorsing the project proponent.

The proposed development would be located on approximately 160 acres of land (1) on the east side of 196th Avenue NE, Redmond 98053, which is a 100 year old registered national historic landmark known as "Red Brick Road" and (2) directly adjacent to the Evans Creek Natural Area, a 38 acre nature preserve in the Bear Creek Basin. See Figure 1. The county has determined that both Evans Creek and its tributaries support "Chinook Salmon as well as

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<sup>1</sup> The subject property consists of King County tax parcels: 0825069012, 0825069055, 0825069013, 0825069029, 0825069102. See [thegunshymanor.com](http://thegunshymanor.com); <http://www.youtube.com/watch?v=jJKV7PwXoJw>

substantial populations of Coho and Sockeye Salmon” and protected bird species. Chinook Salmon are listed as threatened under the federal Endangered Species Act. Additionally, the county provides protection to Great Blue Heron, Red Tailed Hawk and Vaux’s Swift – bird species known to live in the proposed development area. Destruction of aquatic resources and the degradation of habitat of a listed endangered or threatened species are illegal under the federal Clean Water Act and Endangered Species Act, which provide serious civil and criminal penalties, including restoration and fines. See Evans Creek Natural Area website: <http://www.kingcounty.gov/environment/waterandland/natural-lands/ecological/evans-creek.aspx>.

If the county fails to protect these aquatic resources – on a large tract of critical salmon habitat that is immediately adjacent to the Evans Creek Natural Area and adjacent to Red Brick Road, a registered national historic landmark – the elected officials in this county will be sending a strong message to both the regulated community and voters that no environmental or historic resource, no matter how precious, is worthy of protection.

### **Destruction of Aquatic Resources**

Aerial photographs appear to demonstrate that (1) a significant acreage of federally protected and county-designated wetlands adjacent to Evans Creek have been filled, (2) a tributary to Evans Creek was moved and channelized, and (3) the habitat of a listed endangered or threatened species – Chinook Salmon -- has been degraded. For example, the aerial photograph in Figure 2 depicts an undisturbed wetland area and meandering tributary to Evans Creek on tax parcel 0825069012 in 2009. In sharp contrast, the aerial photograph in Figure 3 shows a filled wetland, extensive road construction, and a channelized tributary on the same parcel in 2012. An entire tributary was moved. Finally, Figures 4, 5 and 6 show that the earthwork and tributary alteration occurred in areas that both the federal government and King County have determined to be wetlands. During a community meeting on May 28, 2014, the owner publicly stated that he did not require a permit for any of the filling activity. If this work was performed without a permit, the county’s failure to take enforcement action would be inexcusable, particularly because residents downstream of the fill activity reported that flooding has dramatically increased over the last three years, which coincides with the earth moving activity, and is now threatening their homes. See Figures 8, 9, 10, 11 and 12. There are also serious concerns that the past fill activity, together with the proposed development, will dramatically reduce waste water disposal capacity to existing residents.

In addition, there is no credible basis to support an argument that the discharges of fill material into wetlands or alteration to stream channels were exempt from permitting as an agricultural activity. The roads did not exist for the many decades the property was used for agricultural operations and coincide temporally with the development of Gunshy Manor and geographically with the proposed development map in Figure 1. There is simply no basis to

support any conclusion other than the discharges were to support a new use – the Gunshy Manor development – and do not qualify for a Clean Water Act § 404(f) exemption or any other agricultural exemption. In United States v. Johnson, 891 F2d 287 (Table), 30 ERC 1550 (4th Cir. 1989), the United States Court of Appeals for the Fourth Circuit denied a defendant's attempt to assert that he qualified for a § 404(f) exemption after sporadically developing his wetland property over a ten-year period. The defendant began draining and road- building activities, stopped for ten years, and then resumed the actions in order to develop the property for a “hunting club” and “complete residential development.” The court held he was not protected under § 404’s “[n]arrow exemptions,” because the activities were “not a normal part of ongoing and continuous agricultural or forestry operations, but rather preparations for putting the property to new uses.”

Courts have consistently construed the Clean Water Act § 404(f) exemptions in agricultural conversion cases strictly. For example, in United States v. Huebner, the Seventh Circuit held that expanding cultivation of a wetland crop to adjacent wetlands did not qualify for the § 404(f) exemption, because it required draining the surrounding area and brought the wetland into a new use. In United States v. Akers, the Ninth Circuit denied a normal farming exemption to a defendant who converted his wetlands to upland crop production, even though the wetlands had been farmed since 1897. The court there rejected the defendant’s argument that it was a change within a farming use, holding that the substantiality of the impact on the wetland, not the historical use, is controlling and determines whether the activity is re-captured under Clean Water Act § 404(f)(2).

We request that you direct the county to investigate these activities now and aggressively enforce all applicable environmental laws before moving forward with any further review, approval or permitting for the proposed development.

### **Potential Violation of Privacy Laws and Bias**

Serious concerns about the county’s objectivity regarding this proposed project have arisen for several additional reasons and have created a perception in the community that the county may be acting as a project proponent rather than as an independent regulatory body protecting the public interests. First, on May 29, 2014 two residents contacted Julie Koler and Todd Scott in the Historic Preservation Program, Department of Natural Resources and Parks, for additional information regarding a “Certificate of Appropriateness” (COA) that was issued without public notice or comment in November 2013 and appears to allow primary access to the proposed development on historic Red Brick Road.<sup>2</sup> That same evening, the project proponent approached one of the residents with full knowledge of that communication. This creates a

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<sup>2</sup> Primary access to the development could on Union Hill Road, but would require the project proponent to acquire a small strip of property along the road to satisfy line-of sight requirements. If the County was concerned about preserving Red Brick Road, this should be required.

perception of favoritism and betrays the public trust that the county has acted fairly and is upholding its duties to follow the law and preserve its valuable historic resources.

Second, statements by a county employee endorsing the character of the project proponent create a serious perception of bias. In an email dated May 22nd, 2014, Julie Koler stated that the project proponent “wants the best for the area as much as anyone” and that “he is a good neighbor.” She goes on to predict with confidence that he will fully cooperate with the county. Making such statements suggests bias and favoritism by county employees for an applicant and undermines the regulatory process. County employees are supposed to objectively evaluate permits and planned development. When employees of county agencies make such statements, it demonstrates a conflict of interest exists, creates questions about the ability of King County officials to objectively assess evidence during permitting/review and creates an environment of potential conflict between residents and the county officials who are supposed to protect citizen interests.

Third, the county agency responsible for protecting our historical resources for future generations granted a Type II certificate of appropriateness, allowing primary access to the proposed development on historic Red Brick Road, using a regulatory process that entirely avoided public notice and comment. The county should have issued a Type III certificate, which required more stringent review and public comment, because the proposal will cause irreversible harm to a landmark property. In addition, it appears that the certificate was granted (1) without a geotechnical study that is critical to assessing the irreversible degradation increased residential and commercial traffic to and from the development would cause to the historic landmark and (2) based upon an outdated traffic study that predates major improvements, including a newly constructed roundabout at Union Hill Road, that have dramatically increased traffic and speeds on Red Brick Road. The county’s own documents concerning increased traffic after the roundabout even suggests closing the Red Brick Road as potential mitigation to increased traffic. The community never had an opportunity to raise concerns or submit data because the county excluded the community by avoiding public notice and comment.

We request that you investigate whether employees of the Historic Preservation Program, Department of Natural Resources and Parks, forwarded emails or information about inquiries from residents to the project proponent and violated privacy laws. We further request that you investigate whether bias existed and revoke and remand the certificate of appropriateness back to the agency for further consideration and public input if you determine there was bias.

### **Safety Concerns**

The proposed development poses several safety concerns for both current and future residents of and visitors to the Red Brick Road neighborhood. It does not appear that these risks have been studied adequately by appropriate experts or government officials.



## **Landslide Risk**

Approximately 20 of the 25 homes in the proposed development would lie in a county-defined “landslide hazard area.” See Figure 7. The county describes the identified area as “subject to severe landslide risk identified in the Sensitive Areas Ordinance.”<sup>3</sup> Additionally, three existing properties in the affluent Gunshy Ridge neighborhood are in the same hazard area at the top of the dangerous slope. Although there has been little historic landslide activity in the hazard area, the slope and supporting soil have never been disturbed in a way as will be required for the construction of the development. The disruption from the development, combined with the known combination of steep slopes, impermeable soils and groundwater seepage at the site may be a recipe for disaster for at least 23 households.

## **Traffic Concerns**

The county’s prior efforts to preserve Red Brick Road have resulted in a peaceful and family-friendly corridor for local residents and citizens who visit the Evans Creek Natural Area and registered national historic landmark. The preservation measures of limiting traffic to local-access only and vehicles under five tons has had a secondary effect of protecting local residents and visitors using the roadway on foot. The road does not have sidewalks, which would destroy the rural and historical quality of the registered national historic landmark, and, as a result, all pedestrian and non-motorized use (including frequent use by bicycles and equestrians) is forced onto the roadway. The proposed development however, will significantly increase the traffic and risk to non-motorized uses.

The north side of the Red Brick Road currently services 15 single family properties. The proposed development will add 25 homes to the area and more than double the number of homes using the north side of the road for primary access. Additionally, the current roadway width does not meet any of the width criteria for rural local access roadways defined in the King County Road Design and Construction Standards. Adding homes and potentially increasing the roadway classification to “sub-collector” (as defined by homes served) would be unsafe, given the inability to improve the road to modern safety standards.<sup>4</sup> Families pushing baby strollers, children riding bikes, runners and any other forms of non-motorized recreation including residents with horses, will be faced with an increased onslaught of traffic on this narrow roadway and face an increased risk of accidents. Motorists also face increased risk as traffic increases on a road that is too narrow.

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<sup>3</sup> <http://www.kingcounty.gov/environment/waterandland/flooding/flood-control-zone-district/local-hazard-mitigation-plan-update/hazard-maps.aspx#landslide>

<sup>4</sup> [2007 King County Road Design and Construction Standards](#)



## **Request**

We request your personal involvement and leadership to (1) immediately investigate the potentially unpermitted destruction of wetlands and streams and aggressively prosecute any violations before moving forward with any further review, approval or permitting for the proposed development; (2) investigate whether employees of the Historic Preservation Program, Department of Natural Resources and Parks forwarded emails or information about inquiries from residents to the project proponent and violated privacy laws, and take appropriate disciplinary and enforcement action if it occurred; (3) investigate whether the regulatory process used to issue a Type II COA was flawed by bias and the COA should be revoked and remanded to the agency for further consideration with public notice and comment, and (4) appoint an ombudsman to protect the public interest. The community looks forward to your response.

Best regards,

Citizens of King County (see attached signatures)

cc:

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December 17, 2014

The Honorable County Executive Dow Constantine  
King County Chinook Building  
401 5th Ave. Suite 800  
Seattle, WA 98104

Dear Executive Constantine:

We are writing to thank you and King County for initiating an enforcement investigation into potential violations of county law regarding the destruction of aquatic resources on the Gunshy Manor site, located on the east side of 196th Avenue NE, Redmond, also known as "Red Brick Road" (hereinafter "the Site") and request that the County:

- (1) conduct a thorough investigation that engages with all potential witnesses and enforcement agencies to ensure the full scope of any code violations are discovered and aggressively pursue enforcement action for any and all code violations at the Site;
- (2) to the extent there are violations, require full restoration of all disturbed areas by an independent and certified wetland restoration specialist with full county oversight and coordination with the United States Environmental Protection Agency and the Washington State Department of Ecology;
- (3) require permanent conservation easements for the restoration areas, all restored and existing wetlands and streams, and all critical area buffers plus 500 feet;
- (4) impose maximum civil penalties for each violation under KCC 23.32.040 and any other applicable provisions of county law;
- (5) impose a six year moratorium on all development and permitting on King County tax parcels 0825069012, 0825069013, 0825069102, 0825069103, 0825069104, and 0825069105, as outlined in King County Permitting Customer Bulletin #28;
- (6) conduct a full criminal investigation into possible false statements made during earlier county enforcement investigations and prosecute any individual(s) found to have made false statements;
- (7) pursue civil and criminal actions against any contractor who performed work at the site in violation of King County law;
- (8) fully support any enforcement actions by the federal government, including but not limited to the United States Environmental Protection Agency, the United States Army Corps of Engineers and the United States Department of Justice;
- (9) support a special district overlay that will protect the historical, aquatic and ecological resources on and adjacent to Red Brick Road, including its surrounding wetlands and tributaries to Evans Creek and the Evans Creek Natural Area;

(10) revoke Certificate of Appropriateness No. 1318;

(11) present a plan to enforce existing “local access only” and weight limit restrictions on the road and introduce other traffic calming measures (lower speed limit, access restriction, etc.) to reduce the impact of traffic on the historic roadway;

(12) provide regular updates to the community on enforcement progress and meet with the community before assessing penalties to discuss these matters and next steps for protecting this special historical and ecological resource for future generations of King County residents.

These actions are the reasonable and necessary steps for King County to begin rebuilding credibility with the community – credibility that was completely broken by a pattern and practice of failing to respond to citizen tips and complaints regarding the unpermitted destruction of aquatic resources at the Site, including moving and channelizing one or more tributaries to Evans Creek, or take enforcement action for more than four years and only after federal and state agencies became aware of the issue.

Best regards,

Citizens of King County (see attached signatures)

cc:

Michael Szerlog, Manager  
U.S. Environmental Protection Agency  
Aquatic Resource Unit  
1200 Sixth Avenue, Suite 900  
Mailstop ETPA-083  
6<sup>th</sup> Avenue, Suite 900  
Seattle, WA 98101

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CWA 404 Enforcement Coordinator  
Aquatic Resources Unit  
Ecosystems, Tribal, and Public Affairs Office  
U.S. Environmental Protection Agency  
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Seattle, Washington 98101

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Regulatory Branch Section Chief  
United States Army Corps of Engineers  
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Acting Senior Assistant Attorney General  
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Washington State Department of Ecology  
Northwest Regional Office  
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Bellevue, WA 98008-5452

Patrick McGraner  
Wetlands Specialist  
Department of Ecology  
Northwest Regional Office  
3190160<sup>th</sup> Ave. SE  
Bellevue, WA 98008

Phil Anderson, Director  
Washington Department of Fish and Wildlife  
600 Capitol Way N.  
Olympia, WA 98501-1091

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July 1, 2016

Teresa Luna, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10 (ORC-158)  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140  
[Luna.Teresa@epa.gov](mailto:Luna.Teresa@epa.gov)

Re: Comments on Administrative Order on Consent, Docket No. CWA-10-2016-0087  
and Consent Agreement and Final Order, Docket No. CWA-10-2016-0088,  
regarding Respondents William C. Nelson and The Estate of Barbara Nelson

Dear Ms. Luna:

We, concerned citizens of King County, submit these comments in response to the United States Environmental Protection Agency's ("EPA's") Administrative Order on Consent ("AOC"), Docket No. CWA-10-2016-0087 and Consent Agreement and Final Order ("CAFO"), Docket No. CWA-10-2016-0088, regarding Respondents William C. Nelson and The Estate of Barbara Nelson. We urge EPA to consider carefully these comments and issue an AOC and CAFO that fully addresses the unpermitted discharges of fill material into waters of the United States, remedies the environmental harm and restores critical wetland functions, and imposes a significant civil penalty that is commensurate with the violation, creates a level playing field that does not place developers who comply with the law at a competitive disadvantage to developers who do not, and does not ignore ability to pay.

While the community appreciates EPA's effort, the community cannot support the proposed wetland and stream restoration because it bears little relationship to the degree and kind of harm to the environment and community it is supposed to remedy. Rather than requiring respondents to restore the jurisdictional waters that have been destroyed and the important water purification, flood control and habitat functions they once provided, EPA's proposed AOC and CAFO would (1) allow the respondents to leave the vast majority of unpermitted fill material in place, (2) does not require the respondents to restore the hydrology and hydrophytic vegetation necessary for the impacted wetlands and streams to provide the vital water purification and habitat functions they once provided for Endangered Species Act-protected salmon and other wildlife, and (3) does



not require the respondents to restore the floodwater storage capacity and critical flood control function the wetlands once provided for the community, particularly the residents located on the west side of 196<sup>th</sup> Avenue NE who have experienced severe flooding since the unpermitted fill was discharged. See photographs attached to the Letter to Dow Constantine date June 19, 2014, attached at Exhibit A. Unbelievably, EPA's proposed restoration is less comprehensive than a restoration plan respondents had submitted to EPA during the investigation. The plan respondents submitted included the removal of all gravel from the roads. In sharp contrast, the EPA plan allows the gravel and resulting environmental impacts, including downstream flooding to neighbors on the west side of 196<sup>th</sup> Avenue, NE, to stay in place. In short, EPA's proposed restoration fails to remediate the environmental damage to an important aquatic ecosystem that is adjacent to the Evans Creek Natural Area and Evans Creek, and is critically important to supporting healthy Puget Sound salmon runs and abating flood waters for the community.

Trout Unlimited of Bellevue and Issaquah, in a letter regarding this matter dated September 14, 2014, wrote: "As the county affirms, unpermitted work has occurred in wetlands and other aquatic areas along the Red Brick Road [196th Ave. NE], including work that directly and indirectly affects Evans Creek and its tributaries – known habitat for a number of coldwater fish species, including the ESA-protected Chinook Salmon. In addition to Chinook, the Washington State Priority Habitats and Species Report also lists the disturbed area as habitat for Coho and Kokanee Salmon as well as Cutthroat Trout." See Trout Unlimited Letter dated Sept. 14, 2014, attached as Exhibit B. Accordingly, Trout Unlimited requested "full restoration of critical areas and buffers disturbed by unpermitted clearing, grading and surfacing with impervious material." Id. Likewise, in a letter regarding this matter dated September 25, 2014, Sustainable Redmond similarly wrote: "many tons of fill have been dumped into the federally protected wetlands, and new roads and drainage ditches have been built in the sensitive areas around them, in clear violation of the law." See Sustainable Redmond Letter dated Sept. 25, 2014, attached as Exhibit C. Sustainable Redmond further observed that "[t]he wetland provides important habitat to endangered species of Chinook salmon as well as other protected species including Red tailed Hawkes, Great Blue Herons, Bald Eagles, Coho Salmon, Kokanee Salmon and Vaux's Swift. In addition, rare birds such as the American

bittern have been sighted using the wetland for nesting purposes. The filling and building activities have impacted wildlife and disrupted the hydrology of the wetland complex.”

Id. The fill also “contributes to increased flood risks in near-by properties as surrounding hydrology is affected.” Id. Accordingly, Sustainable Redmond also requested that “All illegal activity on the Gunshy Manor site must be fully remediated. The degraded wetlands areas and their buffers must be restored to their original state.” Id. The community agrees. EPA must require full restoration.

Likewise, the community cannot support the minimal civil penalty EPA proposes because it completely undermines specific and general deterrence, places reputable developers who comply with the law at a severe competitive disadvantage with developers who ignore the law, and ignores respondents’ ability to pay. The minor penalty EPA proposes is an insignificant fraction of the funds that respondents invested to discharge the unpermitted fill to support a high-end residential or light industrial development, and the value of the 124 acre tract of land in Redmond, WA where the unpermitted discharges occurred. The insignificant penalty sends a strong message to the regulated community that penalties for violations of federal environmental laws will be insignificant – even for developers – and are nothing more than an acceptable cost of doing business. EPA’s proposed restoration and civil penalty are arbitrary and capricious and an abuse of the Agency’s discretion. EPA should not enter into a sweetheart deal with these sophisticated respondents, who have been pursuing a high-end residential or light commercial development on this valuable 124 acre tract of land in Redmond, Washington.

**I. EPA’s Proposed Restoration Confers Minimal Environmental Benefit and Bears Little Relationship to the Degree and Kind of Wrong It is Intended to Remedy**

The remedy of restoration is an inherent part of the injunctive relief contemplated by the Clean Water Act and falls within EPA’s equitable jurisdiction. See 33 U.S.C. §§ 1251(a), 1319(b); Leslie Salt Pond Co. v. United States, 820 F. Supp. 478, 484 (N.D.Ca. 1992) (the United States is entitled to “injunctive relief which restores the property at the point of violation to essentially their pre-existing condition”), aff’d 55 F.3d 1388 (9<sup>th</sup> Cir. 1995). In selecting an appropriate restoration plan, EPA should consider whether: (1) the plan will confer maximum environmental benefits, (2) the proposed plan is achievable as

a practical matter, and (3) the proposed plan bears an equitable relationship to the degree and kind of wrong it is intended to remedy. United States v. Weisman, 489 F. Supp. 1331, 1343 (M.D. Fla. 1980), aff'd, 632 F.2d 891 (5<sup>th</sup> Cir. 1980); United States v. Sexton Cove, 526 F.2d 1293, 1301 (5<sup>th</sup> Cir. 1976).

The proposed restoration will confer limited environmental benefit and bears minimal relationship to the degree and kind of wrong it is intended to remedy, and does little to “restore the property at the point of violation to essentially their pre-existing condition.” Leslie Salt Pond, 820 F. Supp. at 484, aff'd 55 F.3d 1388 (9th Cir. 1995). The restoration is so lax that it undermines the Agency’s credibility. Given the glaring deficiencies and extreme leniency of the proposed restoration plan, is unlikely the plan would be entitled to deference if challenged.

“Conferring maximum environmental benefits” requires the restoration of pre-existing wetlands to return biological and ecological functions and values such as flood control, pollutant filtering, improvement of downstream water quality, and improvement of wildlife habitat to maximize the areas’ potential as a nesting and breeding place for the natural flora and fauna that existed prior to the disturbance. See United State v. Cumberland Farms of Connecticut, 647 F. Supp. 1166, 1182 (D. Mass. 1986), aff'd, 826 F.2d 1151 (1<sup>st</sup> Cir. 1987); United States v. Ciampitti, 615 F. Supp. 116, 123 (D.N.J. 1984) (“It stands to reason that the return of the wetlands area to its undeveloped state would confer maximum environmental benefits”), aff'd, 772 F.2d 897 (3d Cir. 1985); United States v. Bradshaw, 541 F. Supp. 884, 885-86 (D. Md. 1982) (maximum environmental benefit conferred by replacing “crucial ecological benefits which were eliminated by defendant’s unlawful action”). Requiring the removal of the fill material is the first and most minimal step necessary to begin restoring the site.

The work outlined in the proposed restoration plan will confer minimal environmental benefit. While the purpose of the plan should be to restore to the extent possible the acres of aquatic resources that existed prior to disturbance so that they will function for decades to come, the proposed plan does not even remotely accomplish that goal. Rather, the proposed restoration ignores the magnitude of the unpermitted fill activity, allows the respondent to leave the vast majority of unpermitted fill in place, thereby permanently depriving the environment and community of the water purification,

flood control and habitat functions these jurisdictional wetlands once provided. Aerial photographs, wetland delineation maps, wetland delineations and documents, including receipts for fill material and photographs show that thousands of cubic yards of fill material were discharged into jurisdictional waters without a permit. See Exhibit D, Notice of Application and SEPA Notice, King County Department of Permitting and Environmental Review, File No.: GRDE 14-0143. The fill was used to construct new roads that coincide with a high-end residential development plan for the site, approximately one mile of new drainage ditches and underground drainage to dewater the site, and significant areas of fill to create additional uplands, which would undoubtedly increase the value of the property for development and result in an even higher return on investment. Although receipts in the administrative record demonstrate that **at least 5,000 cubic yards of fill (crushed asphalt, sand and gravel) was discharged** at the site, **EPA's proposed restoration plan only requires the respondents to remove a mere 278 cubic yards of fill material** – a meager 5 percent of the fill – from a limited area known as the dirt “spur road” (the southeastern-most road that was created recently and extends into the wetland).

Equally disturbing is the fact that EPA is proposing to allow the respondents to leave in place thousands of cubic yards of unpermitted fill material that was used to construct 20 foot wide roads that are suitable to support a large residential development that respondents had been pursuing on this 124 acre tract of land in Redmond. While EPA is purporting to require the respondents to “narrow” the roads from a width of 20 feet to a width of 10 feet, the reality is that EPA is not requiring the respondents to narrow anything. Rather, EPA is proposing to allow the respondents to leave the massive volumes of fill material that were discharged to construct those 20 foot wide roads in place – specifically the additional 10 feet of road width – and simply have the respondents cover the excess road width with mulch and seed. This does nothing to reduce the road width or remove the impervious surface. It does nothing to restore the property at the point of violation to essentially its pre-existing condition. It does nothing to restore the hydrology. It does nothing to remedy the environmental harm and residential flooding. The only thing this illusory “restoration” does is mislead the public and protect respondents’ development investment for another day.

By allowing respondents to leave the extremely large volume of fill material used to construct the additional 10 feet of road width in place, EPA is failing to take the most minimal steps necessary to restore the pre-existing wetlands and return biological and ecological functions and values such as flood control, pollutant filtering, improvement of downstream water quality, and improvement of wildlife habitat to the site. While leaving the environmental damage unaddressed may be extremely cost-effective for the respondents and preserve respondent's significant road investment for future use, it does not restore the biological and ecological functions and confers minimal, if any, benefit on the environment or the community. EPA's characterization of this plan as a "restoration" is misleading to the public.

While we support requirements such as realigning one small section of one of the drainage ditches by adding a bend to a currently straight channel and planting native trees and shrubs in the vicinity of some roads and ditches, such requirements address only a tiny fraction of the environmental harm at this site. EPA is ignoring the vast majority of unpermitted discharges, including unpermitted fill material that was used to construct an underground drainage in Wetland C along Red Brick Road. Inexplicably, EPA has completely ignored the drainage field that was constructed in Wetland C. EPA's failure to require a restoration plan that will restore to the extent possible the acres of aquatic resources that existed prior to disturbance so that they will function for decades to come is inconsistent with the Clean Water Act and contrary to the public's interest.

A restoration plan should bear an equitable relationship to the degree and kind of wrong which it is intended to remedy. While a proper restoration plan will place a burden on the respondents, these sophisticated respondents have no one to blame but themselves for that burden. A restoration that requires the respondents to remove the fill material and restore the environmental values and functions that existed before the aquatic resources were destroyed is fair, necessary to restore the environmental benefits that are required under the CWA, achievable as a practical matter because the site is easily accessed, and equitable in light of the significance of the harm. Accordingly, the community respectfully requests that EPA require a restoration plan that will accomplish these minimal goals and satisfies the requirements of the Clean Water Act.

In addition, the community requests that EPA also make the following amendments to the CAFO and AOC. The community requests that EPA require respondents to place a restrictive environmental covenant on all wetlands, water courses and their buffer zones and restoration areas as an express condition precedent to the transfer or conveyance of any property interest in this site. Because 196th Avenue NE (historic Red Brick Road) is a registered historic landmark and has significant weight restrictions to protect its integrity, the community requests that EPA amend the CAFO and AOC to require that all trucks and equipment use for the restoration solely access the site from the entrance to the property located on Union Hill Road to prevent further damage to the historic brick road. This should have been required if there had been adequate coordination with the State Historic Preservation Officer. Regardless of the requirements of the nationwide permit, the community requests that EPA amend paragraph 4.8 of the CAFO and the AOC to declare that the cost of the restoration shall not be deductible for purposes of federal taxes, as EPA did for the civil penalty. It would be unconscionable for respondents to deduct the restoration costs from their taxes without violating the AOC.

## **II. The Insignificant Civil Penalty EPA Assessed Does Nothing to Deter these Respondents or Others From Committing Future Violations and Places Developers Who Follow the Law at a Competitive Disadvantage**

EPA's proposed civil penalty is so low that it incentivizes developers to violate the law. The Clean Water Act expressly provides that "[a]ny person who violates [sections 301, 402 or 404] . . . and any person who violates any order issued by [EPA] under [section 309(a)], shall be subject to a civil penalty not to exceed [\$37,500, adjusted for inflation] per day for each violation." 33 U.S.C. § 1319(d). The main purposed of a civil penalty is to deter the violator and other from committing future violations. Tull v. United States, 481 U.S. 412, 422-23 (1987). A penalty should be "large enough to hurt; it should deter anyone in the future from showing a similar lack of concern with compliance." United States v. Environmental Waste Control, Inc. 710 F. Supp. 1172, 1244 (N.D. Ind. 1989), aff'd 917 F.2d 327 (7<sup>th</sup> Cir. 1990). The question for EPA to determine is not only the amount of the penalty that will capture the respondents' attention and force them to become concerned about their compliance with the Clean Water Act (specific deterrence), but also the amount that of penalty that will garner the

attention of the respondents' community, and thereby prevent others from acting similarly (general deterrence). EPA should impose a civil penalty that considerably exceeds what respondents and similarly situated persons – namely high-end residential and light industrial developers and commercial real estate investors like these respondents – might consider, and therefore absorb as a cost of doing business. See, e.g., [www.nelsonlegacygroup.com](http://www.nelsonlegacygroup.com).

EPA's proposed \$10,000 civil penalty in this case is so low that it completely undermines specific and general deterrence. The penalty is so meaningless that it creates a powerful incentive for developers and other members of the regulated community to ignore federal law and simply absorb the minor penalty as a cost of doing business. The penalty is a tiny fraction of the funds the respondents invested to create the roads and drainages that resulted in this enforcement action, is not commensurate with the magnitude of the discharges and harm, and does not take ability to pay into account. See, [www.nelsonlegacygroup.com](http://www.nelsonlegacygroup.com), [www.4culture.org/2014/05/from-texaco-to-turkey-house-to-trader-joes-redmond-and-the-nelson-family/](http://www.4culture.org/2014/05/from-texaco-to-turkey-house-to-trader-joes-redmond-and-the-nelson-family/). If the volume of unpermitted fill is 5000 cubic yards, a \$10,000 civil penalty amounts to a meager \$2 fine for each cubic yard of fill and a \$10 per cubic yard fine if you make the unsupportable and false assumption that only 300 cubic yards were involved.

The insignificant penalty EPA is proposing also places reputable developers who comply with the Clean Water Act at a competitive disadvantage to developers who disregard the law to the detriment of the environment, the community, and the regulatory program. It is, quite simply, not fair or in the public's interest. EPA should not place compliant developers at a competitive disadvantage. EPA's proposed penalty is completely unsupported, arbitrary and capricious, will destroy any deterrent effect, and will impair the agency's credibility with the community and regulatory program. We request that EPA impose, at the very least, a \$150,000 penalty on William C. Nelson and a separate \$150,000 penalty on the Estate of Barbara Nelson.

The community appreciates EPA's willingness to initiate an enforcement action at this site. We petition EPA to reconsider and set aside the proposed AOC and CAFO, and require a restoration and civil penalty that restores the property at the point of violation to essentially their pre-existing condition consistent with these comments, actually confers a

benefit on the environment and community that has been seriously harmed by the discharges, is commensurate with the violation, and satisfies the requirements of the Clean Water Act. We also ask that you coordinate similar appropriate relief in the County's separate enforcement action that is currently proceeding. See King County Department of Permitting and Environmental Review, File No.: GRDE 14-0143 (comments closing on July 25, 2016). We stand ready to support EPA on an appropriate restoration plan and civil penalty.

Respectfully submitted,

/s/ Members of the Community – see attached signature pages

cc: Chan Pongkhamsing, EPA Region 10, CWA 404 Enforcement Coordinator  
The Honorable Maria Cantwell  
The Honorable Patty Murray  
The Honorable Suzan DelBene  
The Honorable Roger Goodman  
The Honorable Larry Springer  
Matthew Bennett, Regulatory Section Branch Chief, U.S. Army Corps of Engineers  
Erik C. Stockdale, Section Manager, Shorelands and Environmental Assistance,  
Washington State Department of Ecology  
Patrick McGraner, Wetlands Specialist, Department of Ecology  
Jim Unsworth, Director, Washington Department of Fish and Wildlife  
Dow Constantine, King County Executive  
Jon Pederson, King County, DPER Project Manager (File No. GRDE 14-0143)  
Robert Metzger, President, Trout Unlimited's Bellevue-Issaquah Chapter  
Robert Berg, Co-Chair, Sustainable Redmond



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# Exhibit A

Figure 8: Residential Flooding to  
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Figure 9: Residential Flooding to  
Immediately Downstream

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# Exhibit B



# Bellevue/Issaquah TROUT UNLIMITED



SEP 29 2014

September 25, 2014

The Honorable County Executive Dow Constantine  
Chinook Building, 401 Fifth Avenue, Suite 800  
Seattle, Washington 98104  
[kcexec@kingcounty.gov](mailto:kcexec@kingcounty.gov)

RECEIVED  
KING COUNTY EXECUTIVE OFFICE  
TO: \_\_\_\_\_  
DUE DATE: \_\_\_\_\_  
AUTHOR: \_\_\_\_\_  
SUBJECT: \_\_\_\_\_  
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F.Y.I.

Subject: Restoration of Critical Habitat along the Red Brick Road

Dear Executive Constantine,

I am writing on behalf of the Bellevue-Issaquah chapter of Trout Unlimited to urge King County to require the repair of key coldwater fish habitat along the Red Brick Road (196<sup>th</sup> Ave NE between NE Union Hill Rd and SR-202). **Specifically, we would like the county to require full restoration of critical areas and buffers disturbed by unpermitted clearing, grading and surfacing with impervious material.**

Trout Unlimited's mission is to conserve, protect and restore North America's coldwater fisheries and their watersheds. Additionally, one of our current priorities is headwater protection. Small streams are the places where trout and salmon go to spawn, and adjacent wetlands are the best habitat for their fry. Together they are the building blocks that provide colder, higher water quality for downstream rivers.

With that in mind, we were troubled to hear of recent actions that led to King County Enforcement case ENFR14-0512. As the county affirms, unpermitted work has occurred in wetlands and other aquatic areas along the Red Brick Road, including work that directly and indirectly affects Evans Creek and its tributaries – known habitat for a number of coldwater fish species, including the ESA-protected Chinook Salmon. In addition to Chinook, the Washington State Priority Habitats and Species Report also lists the disturbed area as habitat for Coho and Kokanee Salmon as well as Cutthroat Trout.

In this case, it is the strong belief of Trout Unlimited that full restoration to a natural state is the best way to mitigate these environmental violations. Headwater protection is critical not only for the direct habitat functions these areas provide, but also for the significant effect that disruption of these areas has on downstream water quality and habitat.

Thank you for your consideration. If you have any additional questions or concerns, you may contact me at (b) (6) or by phone at (b) (6)

Respectfully,

Robert Metzger  
President of Trout Unlimited's Bellevue-Issaquah Chapter



# Exhibit C



Promoting Sustainability by Education, Advocacy and Community Events  
Citizens and Neighbors for a Sustainable Redmond, P.O. Box 2194, Redmond, WA 98073

September 25, 2014

*advance copy via email*

The Honorable Dow Constantine  
King County Executive  
King County Chinook Building  
401 Fifth Avenue, Suite 800  
Seattle, WA 98104

The Honorable Kathy Lambert, District 3  
King County Councilmember  
King County Courthouse  
516 Third Avenue, 12<sup>th</sup> Floor  
Seattle, Washington 98104

**Subject: Opposition to Proposed Gunshy Manor Development along the Red Brick Road**

Sustainable Redmond is a grassroots organization with the mission of being a catalyst for moving Redmond's citizens, businesses, and local government toward sustainability. Therefore, we advocate transparency in City and County development processes, better public notice of development proposals and full community engagement throughout<sup>1</sup>.

We wish to bring your attention to a proposed development (Gunshy Manor) on the Red Brick Road, which is a historical landmark in King County. The Red Brick Road (located on 196<sup>th</sup> Ave NE between SR 202 and NE Union Hill Road) is adjacent to the boundary of the City of Redmond and is an important historic and agricultural valley that preserves more than a mile of paved road from the original Yellowstone Trail, dating from 1913. The road runs through more than 100 acres of intact wetlands, some privately owned and some preserved as the Evans Creek Natural Area. It has come to our attention that King County is in the process of receiving pre-applications for a new development project along the road that will build 25 additional homes on property immediately adjacent to Evans Creek Natural Area.

There are a range of direct, indirect and cumulative environmental impacts which should be addressed in the process of a full SEPA review to include:

#### **WETLAND PROTECTION**

Evasion of County Wetland Protection Regulations: The owners of the subject property have been actively filling and channelizing a part of the Evans Creek wetland and building impervious surface roads in the wetland buffer for a number of years, without any permits and without a Farm Management Plan. This activity appears to be an attempt to evade environmental laws by providing County regulators with a fait accompli: land whose hydrological connection to the (now degraded) wetland has been severed, thus justifying proposals to reduce the wetland buffers required by law and enabling more houses to be built.

Violation of County Wetland Protection Regulations: The public record indicates that the county has received multiple complaints for several years regarding this activity. Until recently, these complaints have resulted in investigations that were closed with no violations found, despite eyewitness testimonials, photographs and direct on-site inspection. During this time many tons of fill have been dumped into the federally protected wetlands, and new roads and drainage ditches have been built in the sensitive areas around them, in clear violation of the law. Imagery of this activity is available on Google Earth and in satellite imagery contained in King County's own data bases. Until recently the county has done nothing to prevent this activity which also contributes to increased flood risks in near-by properties as surrounding hydrology is affected.

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<sup>1</sup> In this regard, please see the attachment which assesses issues related to public process and transparency.



Enforcement of County Wetland Protection Regulations: Sustainable Redmond would appreciate an explanation from the County for why multiple inspections of the site during the past five years have found no evidence of wrongdoing. However, when the last formal complaint was received by your office several months ago, copying state and federal officials, suddenly a set of violations were discovered, as if they had happened the day before (please refer to ENFR14-0512).

Redress Requested: To remedy this situation, we are calling on the County to ensure that the wetland habitat and surrounding hydrology are fully restored to their original state, and that all of the roads that were illegally built in the wetland habitat and its legal buffer are removed.

## **HABITAT AND TREE PRESERVATION**

Habitat Protection: Wetlands are a vital and dwindling habitat in King County, especially in the areas that have been most affected by urban sprawl. Sustainable Redmond believes that the Evans Creek Natural Area is worthy of stronger protection than the county has provided to date. The wetland provides important habitat to endangered species of Chinook salmon as well as other protected species including Red Tail Hawks, Great Blue Herons, Bald Eagles, Coho Salmon, Kokanee Salmon and Vaux's Swifts. In addition, rare birds such as the American Bittern have been sighted using the wetland for nesting purposes. The filling and building activities have impacted wildlife and disrupted the hydrology of the wetland complex. The quality of the wetland habitat could be further compromised by a centralized septic system proposed for the project that would be located near the wetland buffer.

Upland Tree Preservation and Landslide Risk: Based on the development plans provided to the local community by the developer, at least 10 acres of mature Douglas fir forest on the slopes of Union Hill will be cleared to make room for new houses. Sustainable Redmond is very concerned about the loss of trees on this scale, particularly as these forests provide important upland habitat to species that use the Evans Creek Natural Area. Further, these trees are located in a County-mapped "landslide hazard area" and landslide risk would be increased by the removal of the soil retention qualities of this tree cover.

## **INTENSIFICATION OF USE**

Community Character and Cultural Impact: In addition to the environmental impact of this development, Sustainable Redmond would like the County to consider the broader impact of the project on the historic area and the community that lives there. The developer intends to use a method known as "clustering" to develop homes on one-acre lots, even though the area is zoned as RA-5. This practice is inappropriate in this particular location, as it does not meet any of the criteria established by the County Comprehensive Plan, and is entirely unaligned with the character of the Red Brick Road neighborhood. Building a gated community of 25 homes on 25 acres of allegedly developable land, including roads, sidewalks, street lights and septic fields, would irreversibly destroy the historically rural and agricultural character of the road and the valley. This is not sustainable development in any sense of the word.

Traffic: Last year, the King County Landmarks Commission issued Certificate of Appropriateness #1318, authorizing the developers to use the Red Brick Road as primary access, approving an additional 2,162 daily trips on the historic road. This is a road designed over a century ago, whose condition is already significantly degraded. The Red Brick Road is too narrow (18') and lacks proper shoulders to meet even the most basic safe design standards. (Any development along the Red Brick Road will require an exception to KCC 14.42.040, which requires developers to improve impacted roads to county design standards.) Because the road cannot be modified, the balance between safety and history must be accomplished by making every effort possible to limit traffic on the road. Developing the subject property at the zoned RA-5 level will reduce the projected increase in traffic volume by 80% since five homes could be built, rather than the 25 planned for in the proposed development.



In conclusion, Sustainable Redmond would like to ensure that any development that occurs in this area is environmentally and socially sustainable. To that end, we ask the County to assure the following:

- 1) All illegal activity on the Gunshy Manor site must be fully remediated. The degraded wetland areas and their buffers must be restored to their original state.
- 2) All new development must be performed within the legal guidelines established by the County for all of its citizens, with a transparent public process that includes all interested parties. This includes requiring a full SEPA assessment, as well as effective enforcement by County regulators of the full critical area buffers prescribed by law - including wetland and landslide hazard areas.
- 3) All new development must respect the established zoning. The County should reject any new proposals involving clustered development along the Red Brick Road.
- 4) The Certificate of Appropriateness #1318 issued by the King County Landmarks Commission should be revoked. All new development in this area must be reviewed to ensure that it does not add significant traffic to the already over-used Red Brick Road.

Thank you for your attention, and please feel free to contact Sustainable Redmond if there is anything we can do to assist in finding alternative solutions that will benefit all parties involved in this matter. We would like to become parties of record in this proceeding.

Respectfully,

(b) (6)

Sustainable Redmond

Sustainable Redmond

**Attachment: Assessment of Public Process and Transparency Regarding Gunshy Manor**

Copy by email to:

Rhonda Berry	Chief of Operations, Office of the County Executive
Jeff McMorris	Chief of Staff, Office of Councilmember Kathy Lambert
John F. Starbard	Director, Permitting and Environmental Review, King County
Christie True	Director, Department of Natural Resources & Parks (DNRP)
Bob Burns	Assistant Director, DNRP
Julie Koler	Historic Preservation Officer, DNRP
Randy Sandin	Line Manager, Department of Permitting & Environmental Review (DPER)
Sheryl Lux	Line Manager, Code Enforcement, DPER
Molly Johnson	Managing Engineer, DPER
Jeri Breazeal	Code Enforcement Officer, DPER
Michael Szerlog	Manager, Aquatic Resources, U.S. EPA Region 10
Chan Pongkhamsing	CWA Section 404 Enforcement Coordinator, U.S. EPA Region 10
Jonathan Smith	North King County Regulatory Program Manager, US Army Corps of Engineers
Maia Bellon	Director, Washington State Department of Ecology
Erik Stockdale	Manager, Shorelands & Environmental Assistance, Washington Department of Ecology
Phil Anderson	Director, Washington State Department of Fish & Wildlife
Stewart Reinbold	Assistant Regional Habitat Program Manager, Washington Department of Fish & Wildlife
David Garland	Watershed Unit Supervisor, Water Quality Program, Washington Department of Ecology

Red Brick Road Community Neighbors



## Assessment of Public Process and Transparency regarding Gunshy Manor

**Preface:** Sustainable Redmond has evaluated local government actions to date regarding the Gunshy Manor property in light of our mission to increase transparency, accountability and effectiveness. These are our findings.

### 1. Expanded Red Brick Road Usage

The Certificate of Appropriateness (COA) "approved" by the King County Landmarks Commission on November 19, 2013 on the recommendation of the King County Design Review Committee (a sub-committee of the Landmarks Commission) only screened broader environmental issues and violations of Federal regulatory provisions. Primacy in this proposed development clearly rests in federal statutes – the Clean Water Act and Endangered Species Act plus the US Fish and Wildlife Service National Wetlands Inventory Program in which the Army Corps of Engineers district office plays a regulatory role – and in County designation of wetland and endangered species supporting those Federal regulations. The King County Landmark and national historic status of the Red Brick Road is important from the local to the national level. This does not give the Landmark Commission the prerogative to subvert the rural community character built around this iconic, 100-year-old roadway and abdicate responsibility of their mission to "ensure that the historic places, material culture, and traditions which best reflect the region's 13,000 years of human history are preserved for future generations."

### 2. Standing of the Type II Certificate of Appropriateness Approval

The joint DNPR/DPER letter of August 4, 2014 addressing Community Concerns states that the COA was provided for "guidance" in the event that a development proposal was forthcoming<sup>2</sup>. If it was only intended as an advisory opinion, it was premature to have gone through the COA process and the application should have been rejected. Correspondence between the neighborhood and county leadership reveals some ambiguity in the standing and purpose of the COA. Is it really informal guidance pending an actual development application or is it, per the November 22, 2013 COA document, the final decision to be "registered with the King County Recorder to run with the land" that is not now subject to appeal? It has all the appearance of the latter, especially because the County has stated in correspondence that the criteria in the COA will be used to evaluate any future development proposals of the Gunshy Manor property.

### 3. Transparency of Certificate of Appropriateness Approval

The process that led to COA approval appears to deliberately avoid the public notification process that would have brought some transparency to the proceedings. There was no notification to the community of either the fast-tracked Landmark Commission deliberations on November 19, 2013 or their subsequent decision so that public members could avail themselves of the 35 day appeal period. Granting of the COA was only made known to the community when revealed by the developer, 6 months after the fact. King County Code 20.62 states that full public notice will be given when a Type II certificate is under consideration<sup>3</sup>. This does not seem to be the case in this

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<sup>2</sup> Because the Certificate of Appropriateness was not required when it was sought and **was issued only as guidance** for a then-unidentified development proposal, the Certificate does not need to be revoked or remanded. If and when a formal development application is submitted to DPER, the public will be notified and will have opportunity to comment and raise issues. Further, if and when a formal application is submitted, DPER will confirm with the Historic Preservation Officer that the specific proposal meets the criteria established in the Certificate of Appropriateness." Page 3, Paragraph 1 (Emphasis added)

<sup>3</sup>20.62.080 C4 The historic preservation officer shall mail notice of the hearing to the owner, the applicant, if the applicant is not the owner, and parties of record at the designation proceedings, not less than ten calendar days before the date of the hearing. No hearing shall be required if the commission, the owner and the applicant, if the applicant is not the owner, agree in writing to a stipulated certificate approving the requested alterations thereof. **This agreement shall be ratified by the commission in a public meeting and reflected in the**



instance. Without public notice, community members cannot become parties of record or know to watch meeting agendas (if promulgated) to inform themselves of development actions in their neighborhood. Neither can they seek redress through an appeals process.<sup>4</sup> Further, there is an opaque quality to both the DRC decision process and any agreement between property owners and Landmark Commission that occurs out of the public eye. None of this suggests a local government that is interested in a transparent and accountable process.

#### 4. Lax Enforcement of Federal Statutes reflected in King County Code

Despite a history of neighborhood complaints regarding destruction of federally-protected wetlands and habitat including county-designated sensitive areas over a period of approximately 5 years, the County did not initiate enforcement action until June 26, 2014 – by coincidence exactly a week after the community had expressed their concern in a letter to elected leadership in King County with copies to state and federal authorities. A letter to the property owner confirming violation of multiple King County Code provisions resulting from construction activities in environmentally critical areas and buffers was subsequently sent on August 7, 2014<sup>5</sup> following a July 31, 2014 site visit that included an official from the Environmental Protection Agency. A distinctly disinterested attitude seemed to characterize code enforcement practices until this matter was elevated to elected officials. The prompt County leadership response to documented environmental concerns governed by Federal statute as raised by the Red Brick Road neighborhood is appreciated. Such extraordinary measures should not have been required to ensure regulatory compliance and enforcement actions should have been taken much earlier. Selective enforcement of this nature can easily be interpreted as a sign of favoritism toward certain parties – exactly the opposite of transparent and accountable government.

#### 5. Future Public Engagement in Gunshy Manor Development Process

Opportunities for public comment on development proposals are embedded in arcane bureaucratic processes that communities may not learn about until it is too late for them to have their voices heard, much less acted upon by jurisdictions relied upon to guard the public trust. While public comment only is only sought in specific development situations, the sense of the community should also be honored as staff becomes aware of it and act to provide more transparency rather than less. Promising to notify the community about future opportunities to comment does not atone for perceptions that their views have been ignored in the past. Further, sale of the subject property to a third party can obviate assurances made by the current property owner, however positive they may be. A full and complete dialogue between the Red Brick Road community, County staff and private developers is in the interest of all concerned before decisions on the future of the area are finalized. It is inconceivable that the character of a community distinguished by a historic landmark like the Red Brick Road could be jeopardized in this fashion without a transparent process with full public input and a sense of community consent.

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*commission meeting minutes. If the commission grants a certificate of appropriateness, such certificate shall be issued forthwith and the historic preservation officer shall promptly file a copy of such certificate with the director. (Emphasis added.)*

<sup>4</sup> 20.62.110 Appeal procedure.

A. **Any person aggrieved by a decision of the commission designating or rejecting a nomination for designation of a landmark or issuing or denying a certificate of appropriateness may, within thirty five calendar days of mailing of notice of such designation or rejection of nomination, or of such issuance or denial or approval of a certificate of appropriateness appeal such decision in writing to the council.** The written notice of appeal shall be filed with the historic preservation officer and the clerk of the council and shall be accompanied by a statement setting forth the grounds for the appeal, supporting documents, and argument.

B. If, after examination of the written appeal and the record, the council determines, that: 1. An error in fact may exist in the record, it shall remand the proceeding to the commission for reconsideration or, if the council determines that: 2. the decision of the commission is based on an error in judgment or conclusion, it may modify or reverse the decision of the commission

<sup>5</sup> Violation Code Enforcement Case ENFR14-0512 reflected in DPER notice letter of August 7, 2014.

# Exhibit D





**King County**

**Department of Permitting  
and Environmental Review**

35030 SE Douglas Street, Suite 210  
Snoqualmie, WA 98065-9266  
206-296-6600 TTY Relay: 711  
[www.kingcounty.gov](http://www.kingcounty.gov)

**Notice of Application  
and SEPA Notice  
Optional DNS/MDNS  
Process**

(Type 1)

**Project Name:** Gunshy Grading Permit

**File No.:** GRDE14-0143

**Applicant:** Estate of Barbara J. Nelson  
Attn. Buff Nelson Jr.

(b) (6)

Redmond WA 98052

**DPER Project Manager (Clearing & Grading):** Jon Pederson

**Phone No.:** 206-477-0330

**E-Mail:** [jon.pederson@kingcounty.gov](mailto:jon.pederson@kingcounty.gov)

**DPER SEPA Review:** Kim Claussen, PPM III

**Phone No.:** 206-477-0329

**E-Mail:** [Kimberly.claussen@kingcounty.gov](mailto:Kimberly.claussen@kingcounty.gov)

**Engineer/Contact:** ESM-Eric LaBrie  
33400 8<sup>th</sup> Ave S, Suite 205  
Federal Way WA 98003  
253-838-6113

**Date Application Filed:** December 2, 2014

**Date Determined Complete:** December 30, 2014

**Date of Mailing:** June 30, 2016

**Project Location:** Parcel Nos.: 082506-9102, -9103, -9104, -9105, & 9012

**Project Description:** Permit to resolve grading (over 500 cubic yards) without a permit (Code Enforcement Case ENFR14-0512), which includes approximately 3,100 lineal feet of road width removal and restoration

**Permit requested in this application:** Clearing & Grading Permit

**Environmental review is required and relevant environmental documents, including mitigation/restoration and farm plans, are available at the above address.**

**Consistency with applicable County plans and regulations:** This proposal will be reviewed for compliance with all applicable King County codes including Roads Standards, Surface Water Design Manual, Zoning, Grading and Critical Areas Codes.

**Other permits not included in this application, known at this time:** N/A

King County Code requires notification of property owners within at least 500 feet of the project proposed above, so they can obtain additional information about the proposal and comment if they wish (KCC 20.20).

The Department of Permitting and Environmental Review (DPER) will issue an Environmental Threshold Determination pursuant to the State Environmental Policy Act (SEPA) on this application following a **21-day public comment period which ends on July 25, 2016**. The responsible official has a reasonable basis for expecting to issue a SEPA Determination of Non-Significance (DNS) on this project. As such, the optional DNS/MDNS notice process is being used pursuant to WAC 197-11-355. The project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared.

**This may be the only opportunity to comment on the environmental impacts of the proposal.** Written comments on this application must be submitted to DPER at the address above by the end of the comment period.

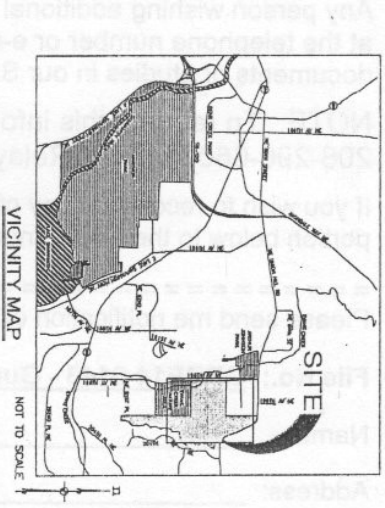
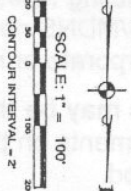
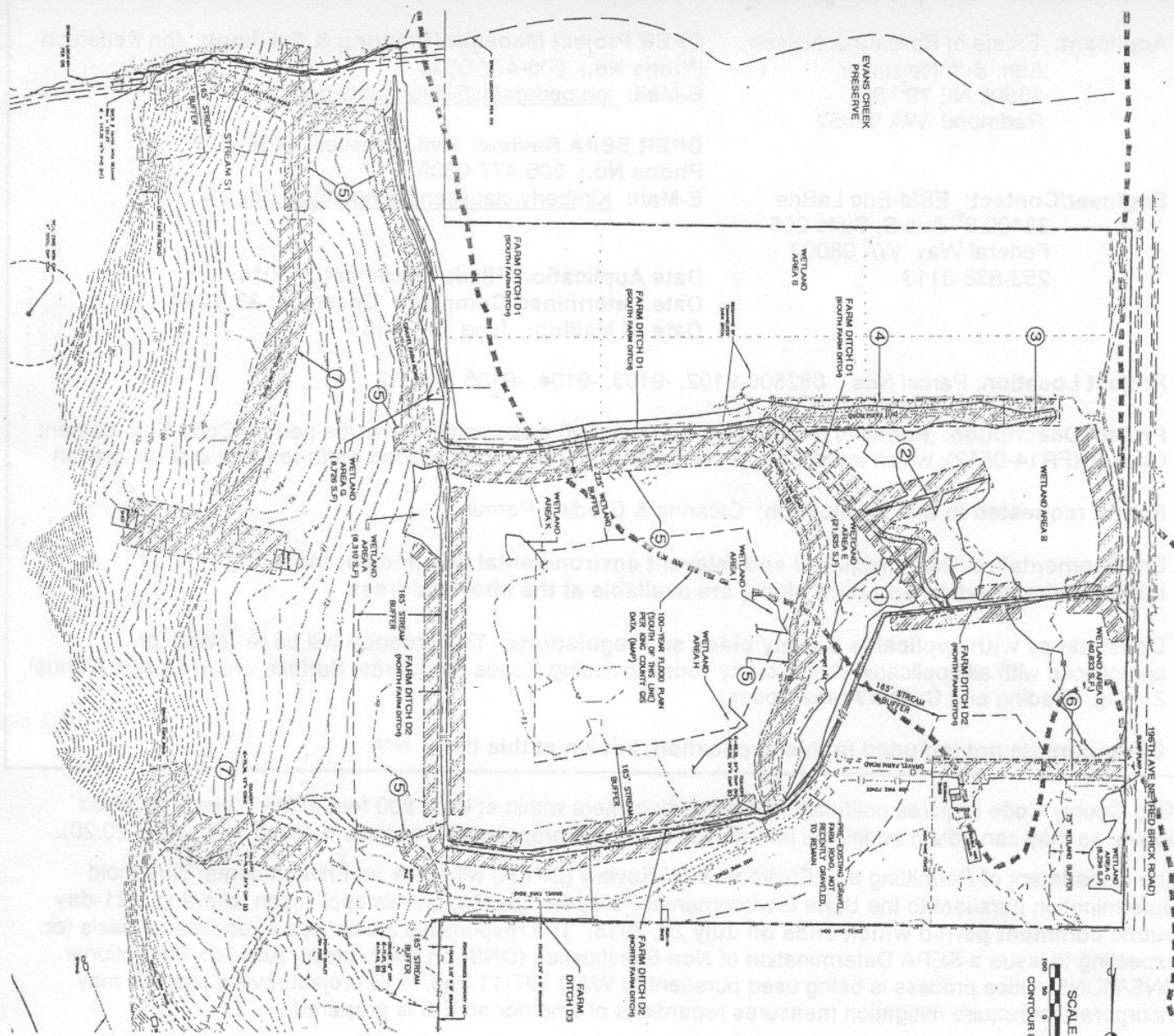
Any person wishing additional information on this proposed project should contact the DPER Project Manager at the telephone number or e-mail listed above. You may also review the application and any environmental documents or studies in our Snoqualmie office.

**NOTE:** To request this information in alternative formats for people with disabilities please call 206-296-6600 or TTY Relay: 711.

If you wish to receive a copy of the SEPA Threshold Determination on this application, complete and return the portion below to the Department of Permitting and Environmental Review at the address listed above.

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WORK DONE WITHOUT ALLEGEDLY REQUIRED  
COUNTY CRITICAL AREAS PERMITS  
(KING COUNTY DPER JENR14-0512)

1. STRAIGHTENING PORTION OF EXISTING FARM DITCH D1
  2. STRAIGHTENING EXISTING LATERAL FARM DITCH WITHIN WETLAND B
  3. PLACEMENT OF GRAVEL AND SOIL ON PRE-EXISTING CORRECT SURFACED FARM ROAD WITHIN CRITICAL AREA BUTTER
  4. PLACEMENT OF GRAVEL AND SOIL ON PRE-EXISTING CORRECT SURFACED FARM ROAD WITHIN CRITICAL AREA BUTTER
  5. PLACEMENT OF GRAVEL ON PRE-EXISTING DIRT FARM ROAD (AND ADJACENT EDDGE) WITHIN CRITICAL AREA BUTTER
  6. CONSOLIDATION OF PRE-EXISTING GRAVEL OVERLAY AND PRE-EXISTING GRAVEL FARM ROAD
  7. PLACEMENT OF GRAVEL ON PRE-EXISTING DIRT FARM ROAD OUTSIDE OF CRITICAL AREA BUTTER
- THE HATCHED AREA INDICATES SCOURING AND GENERALLY NON-CORRODED AREAS OF (1) WORK DONE WITHOUT ALLEGEDLY REQUIRED COUNTY CRITICAL AREAS PERMITS, OR (2) THE PROPERTY OWNER'S PROPOSED MITIGATION/RESTORATION WORK AND PLANNED VOLUNTARY CONSERVATION OF ELEMENTS OF (1) AND (2).

#### OWNERS

THE ESTATE OF BARBARA J. NELSON AND THE KING  
COUNTY ASSOCIATES, INC.  
C/O WILSON & NELSON, JR.  
RENOVATION, WA 98022

#### SITE DATA

KING COUNTY ASSOCIATES PROJECT NUMBER: 082309-4103  
-3104  
-3105  
-3012

ADDRESS: 7240 196TH AVE NE  
REDMOND, WA 98053  
ZONING: RA-5  
LAND USE: FARMING AND RECREATION

CRITICAL AREAS, PURSUANT TO KING COUNTY CODE CHAPTER 21A.24, ARE DEPICTED HEREIN AS  
DETERMINED BY TALASKA ASSOCIATES, JUNE 24 2015 AND SUBMITTED BY ESM CONSULTING  
ENGINEERS, LLC

#### WETLAND AND CONSULTANT

TALASKA CONSULTANTS  
10220 BARN CREEK RD. NE  
WOODBRIDGE, WA 98077

#### HORIZONTAL DATUM

145 OF PLATS, PAGES 77 THROUGH 89, UNDER  
RECORDING NO. 870101020.

#### BASIS OF BEARING

IN 2014, ESM FOR THE PLAT OF "TOWN-SHIRT ROADS" AS  
SHOWN ON PLAT NO. 870101020, DETERMINED THE CORNER OF  
SECTION AS DEPICTED HEREIN.

#### TEMPORARY BENCHMARKS:

BM 1000-REDA AND CONTROL CIP 81.54.62  
BM 1002-PR NAIL AND WISNER, E1.84.32

SHEET NO.	DESCRIPTION
MIT-01	MITIGATION/RESTORATION PLAN - COVER SHEET
MIT-02	MITIGATION/RESTORATION PLAN - DITCHES
MIT-03	MITIGATION/RESTORATION PLAN - STAIR FARM ROAD
MIT-04	MITIGATION/RESTORATION PLAN - LOOP FARM ROAD
MIT-05	MITIGATION/RESTORATION PLAN - FARM DITCH D2
MIT-06	MITIGATION/RESTORATION PLAN - GRAVEL FARM ROAD
MIT-07	MITIGATION/RESTORATION PLAN - GRAVEL FARM ROAD
MIT-08	MITIGATION/RESTORATION PLAN - FARM ROADS

July 17, 2018

Kimberly Claussen  
Project Manager  
King County Department of Permitting and Environmental Review  
35030 SE Douglas St., Ste. 210  
Snoqualmie, WA 98065-9266  
Kimberly.claussen@kingcounty.gov

Re: Comments on Permit Application #: PLAT18-0007; Project Name: Gunshy Manor; Parcel No.:082506-9012, all (082506) 9013, 9067, 9102, 9103, 9104, 9105; Project Location: on the east side of 196<sup>th</sup> Ave. NE (aka Red Brick Road); Applicant: The Estate of Barbara J. Nelson

Dear Ms. Claussen:

We, concerned citizens of King County, including neighbors to the proposed Gunshy Manor Project, submit these comments in response to the notice of application for Permit Application #: PLAT18-0007, submitted by the Estate of Barbara J. Nelson. As the attached declarations and documents demonstrate, the community has a reasonable factual basis to believe that an extensive, unpermitted landfill containing hundreds-of-thousands of cubic yards of demolition debris and hazardous substances was created on the Gunshy Manor property under the cover of darkness from approximately February 1957 through the 1980s, and that the landfill is located under and/or adjacent to the areas that are currently being considered for a residential development where dozens of families would live, children would play and backyard gardens would be planted.<sup>1</sup> The community is concerned that there may be ongoing releases and threatened releases of hazardous substances from the property that have continued since 1957, and that have contaminated and may continue to contaminate the soil, groundwater, surface water and tributaries, both on and off of the property. It appears that at least one well used for drinking water located near Gunshy Manor – 7702 196<sup>th</sup> Avenue NE – may be contaminated. That resident has used bottled water for approximately one year, and there is reasonable basis to be concerned that a plume of contamination may exist in the aquifer. At least one additional home in this community that is downstream of the property also relies on well water as their

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<sup>1</sup> See Exhibit A, Declaration of (b) (6) Exhibit B, Declaration of (b) (6) Exhibit C, Letter from William C. Nelson, dated May 10, 1984; and Exhibit D, Letter from Col. Hintz to William C. Nelson, dated April 27, 1984 (documenting dumping into wetlands “in violation of Federal law”).



source of drinking water, and there may be others. The potential public health effects of ignoring the community's concerns, failing to determine whether the property contains hundreds-of-thousands of cubic yards of demolition debris and hazardous substances that may be leaching into the environment, failing to investigate whether the soil, surface water and ground water is contaminated and poses an ongoing threat to human health and the environment, and allowing a residential development to be constructed above and/or adjacent to potentially hundreds-of-thousands of cubic yards of buried hazardous substances could be catastrophic.

As you are aware, the recent federal Clean Water Act enforcement action against William C. Nelson and the estate of Barbara J. Nelson regarding this property<sup>2</sup> demonstrates that the King County Department of Permitting and Environmental Review ("DPER") has a dismal history of ignoring citizen concerns and neglecting its regulatory duty regarding both this applicant and property unless the citizens elevate their concerns to the state and federal government.<sup>3</sup> We urge DPER to consider carefully and investigate these concerns, request that the applicant withdraw the permit application or unilaterally suspend the application if the application is not withdrawn, and formally request that the Washington State Department of Ecology ("Ecology") and the United States Environmental Protection Agency ("EPA") (collectively "the Agencies") require the potentially liable parties to investigate these concerns and ultimately to cleanup any contamination that may be discovered pursuant to the Agencies' authority under the Washington State Model Toxics Control Act ("MTCA"), RCW 70.105D, and the Comprehensive

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<sup>2</sup> See USEPA Docket No. CWA-10-2016-0087, 0088 (2016).

<sup>3</sup> See Exhibit E, Letter from Sustainable Redmond to Dow Constantine and Kathy Lambert, dated September 25, 2014 ("The public record indicates that the county has received multiple complaints for several years regarding this activity. Until recently, these complaints have resulted in investigations that were closed with no violations found, despite eye witness testimonials, photographs, and direct on-site inspection. During this time many tons of fill have been dumped into the federally protected wetlands, and new roads and drainage ditches have been built in the sensitive areas around them, in clear violation of the law. Imagery of this, activity is available on Google Earth and in satellite imagery contained in King County's own data bases. Until recently the county has done nothing to prevent this activity which also contributes to increased flood risks in near-by properties as surrounding hydrology is affected. ... Sustainable Redmond would appreciate an explanation from the county for why multiple inspections of the site during the past five years have found no evidence of wrongdoing. However, when the last formal complaint was received by your office several months ago, copying state and federal officials, suddenly a set of violations were discovered, as if they had happened the day before (please refer to ENFR 14-0512).")

Environmental, Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601–9675. We also request that DPER fully cooperate with and assist the Agencies and take any additional action available under county authority.

According to long-time residents of 196<sup>th</sup> Avenue NE, Redmond, also known as the historic Red Brick Road, who have ties to the Gunshy Manor property, including one individual who is almost 80 years old, demolition debris from apartment buildings and gas stations were dumped on the property at various times over the course of approximately three decades, from approximately 1957 through the 1980s.

One declarant, (b) (6), recalled that the area that is believed to have been used for the disposal was apparently referred to as the “Dump Field” by prior employees of the property and others. She recalls that when race horses were bred and raised on the property in the 1980s, the ranch manager, (b) (6), would not allow pregnant mares or foals to graze on the field for fear they would be harmed by chemicals or debris. She also recalled that Mrs. Nelson gave her a mare that had been bred about eight times but had only one live birth. She further noted that the ranch manager and (b) (6) .<sup>4</sup>

Another declarant, (b) (6), stated that “the Gunshy Manor property in the mid 1980’s was the final destination for 100,000’s of cubic yards of construction fill” that was “trucked in at night on large belly dumper tractor trailers and those trucks were dumping their construction debris on the valley floor of Gunshy Manor.” He recalled that the “Gunshy Manor valley floor was up to 12’ higher after that construction debris was done.” He also remembered neighbor (b) (6) who worked for Barbara Nelson at Gunshy Manor. A letter from William C. Nelson to the federal government dated May 10, 1984, corroborates that material from various sources started to be dumped on the property in February 1957 and continued for years.<sup>5</sup> Those sources would also be potentially liable parties. See CERCLA, 42 U.S.C. § 9607(a) (defining

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<sup>4</sup> See Exhibit A, Declaration of (b) (6).

<sup>5</sup> See Exhibit B, Declaration of (b) (6) and Exhibit C, Letter from William C. Nelson, dated May 10, 1984



liable parties to include owners and operators, past owners and operators, arrangers and transporters); MTCA, RCW 70.105D.040 (similarly defining potentially liable parties).

The recollections of these long-time residents, the written statements by William C. Nelson to a federal regulator in 1984 and the multiple federal enforcement actions on this property for dumping into wetlands create a compelling factual basis for concern that there may be historical, ongoing and future releases and threatened releases of hazardous substances on and from the property that may pose a serious threat to human health and the environment, and merit a full investigation and, if necessary, a comprehensive cleanup led by DPER, Ecology and EPA before any development is considered, let alone authorized.

As you are aware, commercial buildings, gas stations and other structures that would have been demolished between 1957 and the 1980s and are believed to have been dumped on the property are likely to contain high levels of hazardous materials, including polychlorinated biphenyls ("PCBs"), heavy metals such as mercury and lead, asbestos, volatile organic compounds and polycyclic aromatic hydrocarbons (PAHs), among other chemicals. For example, potential sources of PCBs in buildings from that era include caulking used around windows, door frames, building joints, masonry columns and other masonry building materials. Caulk that was used between 1950 and 1979 may contain as much as 40 percent PCBs (orders of magnitude above the 50 parts per million criteria in the federal Toxic Substances Control Act) and would have been used inside and on the exterior of buildings, as well as in surrounding surfaces. PCBs have also been used in paints, mastics and other adhesives, fireproofing materials, and in the manufacture of ceiling tiles and acoustic boards, among other products. PCBs are also present in many fluorescent light ballasts manufactured before 1979. Significantly, PCBs bind with organic material and leach into and contaminate adjoining wood and masonry in such structures, as well as any soil in which they are buried.

PCBs are a group of man-made organic chemicals consisting of carbon, hydrogen, and chlorine atoms. They were manufactured in the United States from 1929 until their manufacture was banned in 1979. They do not readily break down and may remain in the environment for very long periods of time. They can travel long distances in the air and via suspended solids in water and be deposited in areas far from where they were originally released. PCBs

bioaccumulate, meaning that they accumulate in fat reservoirs of people and animals where they tend to remain for long periods of time, typically for life. The fact that they can reach concentrations that may be orders of magnitude higher than in water, sediment, or soil, a process known as biomagnification, is of great concern. Significantly, PCBs have been demonstrated to cause a wide variety of adverse health effects, including cancer. Serious non-cancer health effects include adverse effects on the immune system, reproductive system, nervous system, endocrine system and other organs.

Other contaminants that would be expected in demolition debris from that era, such as mercury, lead, asbestos, and volatile organic compounds, among others, also pose similar serious cancer and non-cancer health risks. There is concern that if demolished gas stations were dumped and buried on the property, PAHs (a class of chemicals that occur naturally in coal, crude oil, and gasoline) may have also been released into the environment. PAHs are also considered to be cancer-causing chemicals. Given the hydrology of the valley floor – corroborated by the 1984 federal Clean Water Act enforcement action against William C. Nelson by the United States Army Corps of Engineers for dumping thousands of cubic yards into wetlands (Ref. 071-OYB-4-009379-C) and the 2016 federal Clean Water Act enforcement action for more recent dumping – the community is particularly concerned about the possibility of contamination migrating into offsite surface water, ground water and soil. The community is also concerned about potential human health and environmental risks to future residents of a new development (e.g., vapor intrusion into new homes), as well as current residents. The community requests that DPER, Ecology and EPA help before, as (b) (6) states in her declaration, “something really bad happens.”

In addition, the community is very concerned that the proposed development poses another serious public safety risk. It appears that all or many of the proposed homes would be built in an area that King County has determined to be a landslide hazard area. King County describes the proposed development area as “subject to severe landslide risk identified in the Sensitive Area Ordinance.”<sup>6</sup> It appears that three existing properties are in the same hazard area

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<sup>6</sup> See <http://kingcounty.gov/environmental/waterandland/flooding/flood-control-zone-district/localhazard-mitigation-plan-update/hazard-maps.aspx#landslide>.



at the top of the dangerous slope. As long-time Red Brick Road resident (b) (6) recalls, there have been landslides along this slope over the years, including in the area of the proposed development, and one landslide that broke through a door and inundated a family room.<sup>7</sup> To our knowledge, the slope and supporting soil in the proposed development area have never been disturbed in the way would be required for the construction of the proposed development. The disruption from the development, combined with the known combination of steep slopes, impermeable soils, groundwater seepage and historic landslides may be a recipe for disaster for the new homes and the existing homes on the ridge above as well as the existing homes below the ridge. There are other serious concerns such as adverse impacts to critical habitat, tributaries used by salmon on and near the properties, the adjacent Evans Creek Nature Preserve, downstream City of Redmond parks, impacts to the Red Brick Road (a registered historical landmark already neglected by the county) and traffic, which has increased dramatically in volume and speed.

Accordingly, we request that DPER ask the applicant to withdraw the permit application and unilaterally suspend the application if it is not withdrawn. We further request that DPER formally request that Ecology and EPA immediately take action under their MTCA and CERCLA authority to require the estate and any other potentially liable parties to (1) complete a remedial investigation to determine whether hazardous materials were dumped on the property and the nature and extent of any contamination wherever it has come to rest if such material was dumped, (2) if contamination exists, conduct a feasibility study to determine cleanup options, (3) complete a comprehensive cleanup of all soil and water resources that have been impacted and (4) assess natural resource damages. We further request that DPER fully cooperate with and assist the Agencies in this regard. To the extent the Agencies determine that any drinking wells have been contaminated, DPER and the Agencies should require the potentially liable parties to provide temporary bottled water to any affected residents that rely on well water for drinking water and to connect those residents to the municipal water supply as soon as possible. Additional measures such as taking Rule 27 depositions to perpetuate the testimony of older persons with knowledge and potentially filing a *lis pendens* should be considered.

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<sup>7</sup> See Exhibit F, Declaration of (b) (6).

Respectfully submitted,

/s/ Members of the Community – see attached signature pages

cc: Dow Constantine, King County

Maia Bellon, Washington State Department of Ecology

Robert Warren, Washington State Department of Ecology

James Woolford, United States Environmental Protection Agency

Chris Hladick, United States Environmental Protection Agency, Region 10

Sheryl Bilbrey, United States Environmental Protection Agency, Region 10

Edward Kowalski, United States Environmental Protection Agency, Region 10

Matthew Bennett, United States Army Corps of Engineers

The Honorable Maria Cantwell

The Honorable Patty Murray

[kcexec@kingcounty.gov](mailto:kcexec@kingcounty.gov)

[hladick.christopher@epa.gov](mailto:hladick.christopher@epa.gov)

[Bilbrey.sheryl@Epamail.epa.gov](mailto:Bilbrey.sheryl@Epamail.epa.gov)

[Kowalski.edward@Epamail.epa.gov](mailto:Kowalski.edward@Epamail.epa.gov)

[Woolford.james@Epa.gov](mailto:Woolford.james@Epa.gov)

[maia.bellon@ecy.wa.gov](mailto:maia.bellon@ecy.wa.gov)

[bob.warren@ecy.wa.gov](mailto:bob.warren@ecy.wa.gov)

[matthew.j.bennett@usace.army.mil](mailto:matthew.j.bennett@usace.army.mil)



Name	Name
Address	Address
Signature	Signature
1 (b) (6) REDMOND, WA 98053 (b) (6)	8 (b) (6) (b) (6) Redmond, WA 98053 (b) (6)
2 (b) (6) REDMOND, WA 98053 (b) (6)	9 (b) (6) Bellevue, WA 98005
3 (b) (6) Redmond WA 98053 (b) (6)	10 (b) (6) Redmond, WA 98053
4 (b) (6) Redmond, WA 98053 (b) (6)	11 (b) (6) Redmond, WA 98053 (b) (6)
5 (b) (6) (b) (6) (b) (6) Redmond, WA 98053	12 (b) (6) Redmond WA 98053
6 Redmond, WA 98053	13 (b) (6) (b) (6) REDMOND, WA 98053 (b) (6)
7 (b) (6) (b) (6) Redmond, WA 98053	14 (b) (6) (b) (6) REDMOND, WA 98053 (b) (6)

Name	Name
Address	Address
Signature	Signature
1 (b) (6) Redmond, WA 98053	8 (b) (6) Redmond, WA 98053
2 (b) (6) (b) (6)	(b) (6)
3 (b) (6) Duvall, WA 98019	9 (b) (6) REDMOND WA 98053
4 (b) (6) Redmond, WA 98053	10 (b) (6) Redmond, WA 98053
5 (b) (6) Redmond, WA 98053	11 (b) (6) Redmond, WA 98053
6 (b) (6) Redmond, WA 98053	12 (b) (6) REDMOND, WA 98053
7 (b) (6) Redmond, WA 98053	13 (b) (6) Port Hadlock, WA, 98339
8 (b) (6) REDMOND WA 98053	14 (b) (6) Redmond, WA 98053
	(b) (6)

## Public Comments reject KC DPER PLAT18-0007

Name	Name
Address	Address
Signature	Signature
1 (b) (6) Redmond WA 98053 (b) (6)	8 (b) (6) Seattle WA 98136 (b) (6)
2 (b) (6) Redmond, WA 98053 (b) (6)	9 (b) (6) Redmond, WA 98053 (b) (6)
3 (b) (6) SAMMAMISH, WA 98074 (b) (6)	10 (b) (6) (b) (6) Redmond WA 98053 (b) (6)
4 (b) (6) SAMMAMISH, WA 98074 (b) (6)	11 (b) (6) Redmond, WA 98053 (b) (6)
5 (b) (6) Redmond WA 98052 (b) (6)	12 (b) (6) Redmond, WA 98053 (b) (6)
6 (b) (6) Redmond WA 98052 (b) (6)	13 (b) (6)
7 (b) (6) Redmond, WA 98052 (b) (6)	14

Name	Name
Address	Address
Signature	Signature

1 (b) (6) 8

Redmond, WA 98053

2 (b) (6) 9

REDMOND, WA 98053

3 (b) (6)

Redmond WA 98053

4 (b) (6)

Redmond, WA, 98053

5 (b) (6) 12

Redmond, WA 98053<sup>CR</sup>

(b) (6) 13

Redmond WA 98053

7 (b) (6) 14

Public Comments reject KC DPER PLAT18-0007

Name	Name
Address	Address
Signature	Signature

1 (b) (6)

8

Summamish

(b) (6)

2 (b) (6)

9

Sammamish WA 98074

(b) (6)

3 (b) (6)

10

Redmond, WA 98053

(b) (6)

4 (b) (6)

11

Redmond WA 98053

(b) (6)

5 (b) (6)

12

Redmond WA 98053

6

13

7

14

## Exhibit A



I declare and state as follows:

I make this declaration based upon personal knowledge of which I am competent to testify. (b) (6), also known as 196th Ave NE. In the eighties, I met a girl named (b) (6) about my age riding her horse down the bricks so I introduced myself. She was working as a ranch hand down the street at Gunshy Manor. They raised trained and bred racehorses. I was thrilled I met someone to ride with, and I got to see first hand the ranch that was so beautiful down the street. I was a frequent visitor and became acquainted with the ranch manager and also Mrs. Nelson. She gave me a mare named Clever Issue she was done with that I had for many years. (b) (6) the ranch manager became my horseshoer and came to my home every 6 weeks for years. There was a huge flat field at Gunshy right at the center of the place and where the new proposed development has homes that went unused for ever. I knew they were always moving horses around to manage the pastures, and the addition of that pasture to the mix would be of help. I was told by (b) (6) that they called it the "Dump field" it was filled with gas stations and apartment buildings from before and during his time on Gunshy Manor and he had been working for Barbara Nelson since the mid 1960's and he would not allow babies or pregnant mares on that land for fear they would be harmed by chemicals or debris. It was around 1988 they pointed out a toilet rising to the surface, I remember (b) (6) saying "that's a leg breaker there" as he pointed to the toilet. The owner Bill Nelson, it was rumored in the neighborhood had been caught filling the wetland down there with debris. I knew he had been doing it, it was common knowledge. I thought it was terrible then but since both Nesons are gone now, they wanted to make the property more saleable. They have been turned in multiple times and King County has been weak and ineffective at taking control of the situation.

So here we are some 30 years later and I have contacted the county, the Department of Ecology and anybody I could think of.

(b) (6) lived on the property for many years and drank the water that comes from the aquifer that exists in our area. I always worried about the horses on that property, they had a high rate of losing babies. The mare I got from Mrs. Nelson had been bred about eight times and had one live birth. (b) (6). What the elder (b) (6) of I don't know. I am very worried about building on that land and having, the poisons and what ever is trapped in the ground to affect anybody living in the area, not to mention living on top of it. Please, this time listen to the public and do something before something really bad happens.

*Sincerely,*

(b) (6)



## Exhibit B



(b) (6) (b) (6)  
I, (b) (6) declare and state as follows:

1. I make this declaration based upon personal knowledge of which I am competent to testify.

2. (b) (6) on the Brick road also known as 196th Ave NE. (b) (6) (b) (6) Gunshy Manor on Union Hill Road. Martin Creek ran through part of my land and every fall during the salmon runs I would catch by hand and move spawning salmon past the downstream farms where hog wire held back the salmon from reaching the gravel of Martin Creek that also went through Gunshy Manor. (b) (6) (b) (6) in the 1970's and 1980's. I know a lot of Red Brick Road history and activities that involved Gunshy Manor, owned at that time by William & Barbara Nelson. (b) (6) (b) (6) the Redmond Shell Service Station on Redmond Way across from the Old Redmond City Hall and Fire Station. (b) (6) from about 1962, before President John F Kennedy was assassinated until 1967, before Attorney General Robert F Kennedy was assassinated. I remember (b) (6) coming in to the station on (b) (6) and listening to the radio news report of JFK's assassination breaking news. After leaving the gas station business prior to 1968 (b) (6) at the Redmond Yard alongside Union Hill Road during the 1970's and 1980's.

3. The Gunshy Manor property in the mid 1980's was the final destination for 100,000's of Cubic Yards of construction fill. It was trucked in at night on large belly dumper tractor trailers and those trucks were dumping their construction debris on the valley floor of Gunshy Manor. I know this because (b) (6) driving truck and I knew of a huge construction project that had an enormous amount of debris and fill to deposit. (b) (6)

(b) (6) (b) (6) the Gunshy Manor valley floor was up to 12' higher after that construction debris fill was done. A neighbor on the Red Brick Road named (b) (6) worked for Barbara Nelson at Gunshy Manor and he knew those dump trucks were dumping that debris because he lived on the Gunshy Manor property during this time. (b) (6) was a good person and helped folks on the Red Brick Road, he was really good at keeping a farm in top shape.

4. There could be hazardous materials buried in that mix of debris. I am aware that in the 1960's there was a new Enco gas station built on the site of the old Texaco station in downtown Redmond. The old Texaco was on land owned by William Nelson of Gunshy Manor. It was on

the corner of Leary Way and Redmond Way and had to be torn down so that the larger and modern Enco service station with new pumps and such could be built. They would have to decommission the buried fuel tanks of the old Texaco since those were old. If there was not room on site for new tanks then the old tanks had to be dug out and disposed.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8 day of July, 2018.

(b) (6)

(b) (6)

## Exhibit C



## CORROON & BLACK, INC.

2911 Second Avenue  
P.O. Box C-34201  
Seattle, Washington 98124  
206-583-2300 Telex: 32-0215

May 10, 1984

Department of The Army  
Seattle District Corps of Engineers  
P. O. Box C-3755  
Seattle, WA 98124

Attention: Regulatory Functions Branch  
Re: 071-OYB-4009379/ William C. Nelson  
Gentlemen:

> In response to your April 27, 1984 letter and further to my April 30th letter, I attempted to call Mike Bowlus but he is out of the City this week. In response to some of your questions, this work was started in February, 1957. The reason it was started before obtaining a Department of The Army permit is that at that time we had no knowledge that the Department of The Army was involved in any way. It wasn't until earlier this year when we received a call from Mr. Bowlus that we had any idea of any involvement by the Department of The Army.

> The property ownership is in the name of William C. and Barbara J. Nelson. There has been no construction. The primary purpose of the fill is to continue the farming operation. A substantial portion of our property is fenced. We are commercial breeders of thoroughbred race horses and Polled Herefords. We have approximately 30 horses and about 70 head of cattle. We employ three full time people. We have farmed this property on a continuous basis. Different people have brought fill to us through the years.

Prior to leaving for Alaska I thought I had an engineer who could draw the sketch you requested. Even though he agreed to do the work, when I returned, he advised me that his other work had priority and was too pressing for him to do our project.

In that I am going to again be away for approximately three weeks, it is my thought to bring the engineer we select directly to Mike Bowlus so that they can work together and you can obtain the information you desire.

Sincerely,

>   
William C. Nelson

WCN/rmb



## Exhibit D

CERTIFIED MAIL

APR 27 1984

Regulatory Functions Branch

Mr. William Nelson  
20031 Northeast 80th  
Redmond, Washington 98052

Reference: 071-OYB-4-009379-C  
Nelson, William

Dear Mr. Nelson:

A recent inspection of activities along Evans Creek on your property near Redmond, King County, Washington, has disclosed that you have placed fill on wetlands adjacent to waters of the United States without a Department of the Army permit. This work is considered to be in violation of Federal law.

The following laws, extracts enclosed, apply to the unauthorized work:

Clean Water Act.

a. Section 404 prohibits the placement of any fill or dredged material in waters of the United States and adjacent wetlands not authorized by Department of the Army permit.

The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The Corps of Engineers has the responsibility for determining whether a specific wetland area is within Section 404 jurisdiction.

b. Section 309 cites penalties for violation of Section 404.

You are directed to do no further filling on wetlands adjacent to Evans Creek at this site. To assist in the evaluation of this violation, the following information is requested:

- a. As-built sketch of the work within Corps jurisdiction.
- b. Who did the work? If a contractor, please furnish name, address, and telephone number.
- c. Date when the work started.

- d. Reasons why the work was started before obtaining a Department of the Army permit.
- e. Property ownership at time of construction.
- f. Primary purpose of the fill.
- g. Practicable alternatives available that would not involve filling of wetlands.

Your sketch should be drawn to scale and include plan, elevation and section views of the work. The location of the fill in relation to your property lines and the original landward limits of the adjacent wetlands should be shown on the plan view. This information must be furnished within 30 days from the date of this letter.

Your comments will be beneficial in resolving this matter. If you have any questions concerning your reply, please contact Mr. Michael Bowlus, telephone (206) 764-3495.

Sincerely,

*for* LTC REA /a/  
Norman C. Hintz  
Colonel, Corps of Engineers  
District Engineer

Enclosure

CERTIFIED MAIL  
No. 907-  
RETURN RECEIPT REQUESTED

## Exhibit E





Promoting Sustainability by Education, Advocacy and Community Events  
Citizens and Neighbors for a Sustainable Redmond, P.O. Box 2194, Redmond, WA 98073

September 25, 2014

*advance copy via email*

The Honorable Dow Constantine  
King County Executive  
King County Chinook Building  
401 Fifth Avenue, Suite 800  
Seattle, WA 98104

The Honorable Kathy Lambert, District 3  
King County Councilmember  
King County Courthouse  
516 Third Avenue, 12<sup>th</sup> Floor  
Seattle, Washington 98104

**Subject: Opposition to Proposed Gunshy Manor Development along the Red Brick Road**

Sustainable Redmond is a grassroots organization with the mission of being a catalyst for moving Redmond's citizens, businesses, and local government toward sustainability. Therefore, we advocate transparency in City and County development processes, better public notice of development proposals and full community engagement throughout<sup>1</sup>.

We wish to bring your attention to a proposed development (Gunshy Manor) on the Red Brick Road, which is a historical landmark in King County. The Red Brick Road (located on 196<sup>th</sup> Ave NE between SR 202 and NE Union Hill Road) is adjacent to the boundary of the City of Redmond and is an important historic and agricultural valley that preserves more than a mile of paved road from the original Yellowstone Trail, dating from 1913. The road runs through more than 100 acres of intact wetlands, some privately owned and some preserved as the Evans Creek Natural Area. It has come to our attention that King County is in the process of receiving pre-applications for a new development project along the road that will build 25 additional homes on property immediately adjacent to Evans Creek Natural Area.

There are a range of direct, indirect and cumulative environmental impacts which should be addressed in the process of a full SEPA review to include:

#### **WETLAND PROTECTION**

Evasion of County Wetland Protection Regulations: The owners of the subject property have been actively filling and channelizing a part of the Evans Creek wetland and building impervious surface roads in the wetland buffer for a number of years, without any permits and without a Farm Management Plan. This activity appears to be an attempt to evade environmental laws by providing County regulators with a fait accompli: land whose hydrological connection to the (now degraded) wetland has been severed, thus justifying proposals to reduce the wetland buffers required by law and enabling more houses to be built.

Violation of County Wetland Protection Regulations: The public record indicates that the county has received multiple complaints for several years regarding this activity. Until recently, these complaints have resulted in investigations that were closed with no violations found, despite eyewitness testimonials, photographs and direct on-site inspection. During this time many tons of fill have been dumped into the federally protected wetlands, and new roads and drainage ditches have been built in the sensitive areas around them, in clear violation of the law. Imagery of this activity is available on Google Earth and in satellite imagery contained in King County's own data bases. Until recently the county has done nothing to prevent this activity which also contributes to increased flood risks in near-by properties as surrounding hydrology is affected.

<sup>1</sup> In this regard, please see the attachment which assesses issues related to public process and transparency.

**In conclusion**, Sustainable Redmond would like to ensure that any development that occurs in this area is environmentally and socially sustainable. To that end, we ask the County to assure the following:

- 1) All illegal activity on the Gunshy Manor site must be fully remediated. The degraded wetland areas and their buffers must be restored to their original state.
- 2) All new development must be performed within the legal guidelines established by the County for all of its citizens, with a transparent public process that includes all interested parties. This includes requiring a full SEPA assessment, as well as effective enforcement by County regulators of the full critical area buffers prescribed by law - including wetland and landslide hazard areas.
- 3) All new development must respect the established zoning. The County should reject any new proposals involving clustered development along the Red Brick Road.
- 4) The Certificate of Appropriateness #1318 issued by the King County Landmarks Commission should be revoked. All new development in this area must be reviewed to ensure that it does not add significant traffic to the already over-used Red Brick Road.

Thank you for your attention, and please feel free to contact Sustainable Redmond if there is anything we can do to assist in finding alternative solutions that will benefit all parties involved in this matter. We would like to become parties of record in this proceeding.

Respectfully,

(b) (6)

Sustainable Redmond

Sustainable Redmond

**Attachment: Assessment of Public Process and Transparency Regarding Gunshy Manor**

Copy by email to:

Rhonda Berry	Chief of Operations, Office of the County Executive
Jeff McMorris	Chief of Staff, Office of Councilmember Kathy Lambert
John F. Starbard	Director, Permitting and Environmental Review, King County
Christie True	Director, Department of Natural Resources & Parks (DNRP)
Bob Burns	Assistant Director, DNRP
Julie Koler	Historic Preservation Officer, DNRP
Randy Sandin	Line Manager, Department of Permitting & Environmental Review (DPER)
Sheryl Lux	Line Manager, Code Enforcement, DPER
Molly Johnson	Managing Engineer, DPER
Jeri Breazeal	Code Enforcement Officer, DPER
Michael Szerlog	Manager, Aquatic Resources, U.S. EPA Region 10
Chan Pongkhamsing	CWA Section 404 Enforcement Coordinator, U.S. EPA Region 10
Jonathan Smith	North King County Regulatory Program Manager, US Army Corps of Engineers
Maia Bellon	Director, Washington State Department of Ecology
Erik Stockdale	Manager, Shorelands & Environmental Assistance, Washington Department of Ecology
Phil Anderson	Director, Washington State Department of Fish & Wildlife
Stewart Reinbold	Assistant Regional Habitat Program Manager, Washington Department of Fish & Wildlife
David Garland	Watershed Unit Supervisor, Water Quality Program, Washington Department of Ecology

Red Brick Road Community Neighbors



instance. Without public notice, community members cannot become parties of record or know to watch meeting agendas (if promulgated) to inform themselves of development actions in their neighborhood. Neither can they seek redress through an appeals process.<sup>4</sup> Further, there is an opaque quality to both the DRC decision process and any agreement between property owners and Landmark Commission that occurs out of the public eye. None of this suggests a local government that is interested in a transparent and accountable process.

#### 4. Lax Enforcement of Federal Statutes reflected in King County Code

Despite a history of neighborhood complaints regarding destruction of federally-protected wetlands and habitat including county-designated sensitive areas over a period of approximately 5 years, the County did not initiate enforcement action until June 26, 2014 – by coincidence exactly a week after the community had expressed their concern in a letter to elected leadership in King County with copies to state and federal authorities. A letter to the property owner confirming violation of multiple King County Code provisions resulting from construction activities in environmentally critical areas and buffers was subsequently sent on August 7, 2014<sup>5</sup> following a July 31, 2014 site visit that included an official from the Environmental Protection Agency. A distinctly disinterested attitude seemed to characterize code enforcement practices until this matter was elevated to elected officials. The prompt County leadership response to documented environmental concerns governed by Federal statute as raised by the Red Brick Road neighborhood is appreciated. Such extraordinary measures should not have been required to ensure regulatory compliance and enforcement actions should have been taken much earlier. Selective enforcement of this nature can easily be interpreted as a sign of favoritism toward certain parties – exactly the opposite of transparent and accountable government.

#### 5. Future Public Engagement in Gunshy Manor Development Process

Opportunities for public comment on development proposals are embedded in arcane bureaucratic processes that communities may not learn about until it is too late for them to have their voices heard, much less acted upon by jurisdictions relied upon to guard the public trust. While public comment only is only sought in specific development situations, the sense of the community should also be honored as staff becomes aware of it and act to provide more transparency rather than less. Promising to notify the community about future opportunities to comment does not atone for perceptions that their views have been ignored in the past. Further, sale of the subject property to a third party can obviate assurances made by the current property owner, however positive they may be. A full and complete dialogue between the Red Brick Road community, County staff and private developers is in the interest of all concerned before decisions on the future of the area are finalized. It is inconceivable that the character of a community distinguished by a historic landmark like the Red Brick Road could be jeopardized in this fashion without a transparent process with full public input and a sense of community consent.

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*commission meeting minutes. If the commission grants a certificate of appropriateness, such certificate shall be issued forthwith and the historic preservation officer shall promptly file a copy of such certificate with the director. (Emphasis added.)*

<sup>4</sup> 20.62.110 Appeal procedure.

A. **Any person aggrieved by a decision of the commission** designating or rejecting a nomination for designation of a landmark or issuing or denying a certificate of appropriateness **may, within thirty five calendar days of mailing of notice of such designation or rejection of nomination, or of such issuance or denial or approval of a certificate of appropriateness appeal such decision in writing to the council.** The written notice of appeal shall be filed with the historic preservation officer and the clerk of the council and shall be accompanied by a statement setting forth the grounds for the appeal, supporting documents, and argument.

B. If, after examination of the written appeal and the record, the council determines, that: 1. An error in fact may exist in the record, it shall remand the proceeding to the commission for reconsideration or, if the council determines that: 2. the decision of the commission is based on an error in judgment or conclusion, it may modify or reverse the decision of the commission

<sup>5</sup> Violation Code Enforcement Case ENFR14-0512 reflected in DPER notice letter of August 7, 2014.

## Exhibit F



DECLARATION OF (b) (6)

I, (b) (6) declare and state as follows:

I am of the age of majority and make this declaration from my personal knowledge and am competent to testify to the matters set forth herein.

(b) (6) of the Brick Road at (b) (6) Redmond Washington for (b) (6) (b) (6) south of the proposed Gunshy Manner development, referred to as File No: Plat 18-0007-Gunshy Manor.

(b) (6) I have personal Knowledge of the matters set forth herein on the ridge behind our home and other homes along the base of the ridge and specifically in the area of the proposed development. One such slide occurred on a home site doing damage to the house located there. That particular slide started on the slope to the east of the home on that site and actually broke though French doors and entered the family room. The address of that home was (b) (6) Redmond WA 98053.

The ridge lays in a north-south direction east of 196<sup>th</sup> N.E., between it and substantially parallel to the entire length of the Brick Road and the proposed building sites for additional new homes.

I affirm under penalty of perjury under the laws of the State of Washington the foregoing statements contained herein are true and accurate to the best of my ability

(b) (6)

Dated this 2<sup>nd</sup> day of July 2018